



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Suzanne Lee Chan, Vice Mayor
Anu Natarajan
Bill Harrison
Dominic Dutra

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Mark Danaj, Assistant City Manager

Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Susan Gauthier, Acting City Clerk
Annabell Holland, Community Services Director
Norm Hughes, City Engineer
Bruce Martin, Fire Chief
Jim Pierson, Public Works Director
Jeff Schwob, Interim Community Dev. Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Brian Stott, Human Resources Director
Lori Taylor, Economic Development Director
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

**NOTICE AND AGENDA OF SPECIAL MEETING
CLOSED SESSION
CITY OF FREMONT
AND
REDEVELOPMENT AGENCY**

DATE: Tuesday, July 19, 2011

TIME: 5:30 p.m.

LOCATION: Fremont Room, 3300 Capitol Avenue, Fremont-

TELECONFERENCE NOTICE

*Pursuant to Government Code Section 54953, Subdivision (b), the following Council meeting will include teleconference participation by Councilmember Natarajan from:
303 Salarpuria Aristocracy, 14th Cross Road, J.P. Nagar 1st Phase, Bangalore 560078, India.*

CALL TO ORDER

ROLL CALL

PUBLIC COMMENT:

Any person desiring to speak on an item listed on this Notice, may do so now. The Chair/Mayor will limit the length of your presentation and each speaker may only speak once on each item.

Council

- 1) **CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director and Harvey Levine, City Attorney as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Association of Management Employees
Fremont Association of City Employees
Operating Engineers
Teamsters Local 856
Fremont Police Association
Professional Engineers and Technicians Association

- 2) **CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director and Harvey Levine, City Attorney as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Fire Fighters
Fremont Fire Fighters Battalion Chiefs

Agency

CONFERENCE WITH REAL PROPERTY NEGOTIATORS: This closed session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority regarding price and terms of payment to its real property negotiators.

Property Owner	Address	Parcel No.	Acres
Redevelopment Agency	37070 Fremont Blvd.	501-142600403	2.50
Redevelopment Agency	37120 Fremont Blvd.	501-142600601	.77
Redevelopment Agency	37156 Fremont Blvd	501-142600803	2.00
Redevelopment Agency	37196 Fremont Blvd.	501-142601002	.75
Redevelopment Agency	37122 Fremont Blvd.	501-142601100	.54
Redevelopment Agency	37218 Fremont Blvd.	501-142601203	.05

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the Agency—(which will be represented at the meeting) Elisa Tierney, Redevelopment Agency Director; Clifford Nguyen, Planner/Project Manager, Agency Attorney, Harvey Levine and Special Counsel, Jack Nagel.

This Special Meeting is being called by Chair/Mayor Wasserman.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
JULY 19, 2011
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

TELECONFERENCE NOTICE

*Pursuant to Government Code Section 54953, Subdivision (b), the following Council meeting will include teleconference participation by Councilmember Natarajan from:
303 Salarpuria Aristocracy, 14th Cross Road, J.P. Nagar 1st Phase, Bangalore 560078, India.*

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – None*
- 2.3 *Second Reading and Adoption of an Ordinance of the City Council of the City of the City of Fremont Enacted Pursuant to the Health and Safety Code Section 34193 to Elect and Implement Participation by the City of Fremont and the Redevelopment Agency of the City of Fremont in the Alternative Voluntary Redevelopment Program Pursuant to Part 1.9 of the California Community Redevelopment Law*

RECOMMENDATION: Adopt ordinance.

2.4 *REJECT ALL BIDS RECEIVED FOR CONSTRUCTION CONTRACT FOR THE CENTERVILLE BALLFIELD SYNTHETIC TURF PROJECT - PROJECT NUMBER 8717 (PWC)*

Reject All Bids Received for the Centerville Ballfield Synthetic Turf Conversion Project, 8717 (PWC), and Re-Advertise Project

Contact Person:

<i>Name:</i>	<i>Mark Mennucci</i>	<i>Roger Ravenstad</i>
<i>Title:</i>	<i>Associate Landscape Architect</i>	<i>Senior Landscape Architect</i>
<i>Dept.:</i>	<i>Community Services</i>	<i>Community Services</i>
<i>Phone:</i>	<i>510-494-4530</i>	<i>510-494-4723</i>
<i>E-Mail:</i>	<i>mmennucci@fremont.gov</i>	<i>rravenstad@fremont.gov</i>

RECOMMENDATION: Reject all bids received for Construction Contract for the Centerville Ballfield Synthetic Turf Conversion Project, City Project No. 8717 (PWC), and direct staff to revise the contract documents as necessary and re-advertise the contract.

2.5 *CONTRACT AMENDMENT WITH PERKINS+WILL FOR \$65,000 FOR WARM SPRINGS/SOUTH FREMONT AREA STUDIES*

Authorize the City Manager or Designee to Amend the Contract with Perkins+Will for \$65,000 for Planning and Technical Studies Related to Warm Springs/South Fremont Area Studies

Contact Person:

<i>Name:</i>	<i>Brian Millar</i>	<i>Lori Taylor</i>
<i>Title:</i>	<i>Project Manager/Consultant</i>	<i>Director</i>
<i>Dept.:</i>	<i>Administration</i>	<i>Economic Development</i>
<i>Phone:</i>	<i>510-284-4008</i>	<i>510-284-4024</i>
<i>E-Mail:</i>	<i>bmillar@fremont.gov</i>	<i>ltaylor@fremont.gov</i>

RECOMMENDATION:

- 1. Staff recommends the City Council authorize the City Manager or designee to amend the contract with Perkins+Will to a not-to-exceed amount of \$395,000.*
- 2. Approve the appropriation of \$65,000 from the Capital Improvement Fund 501 unallocated fund balance to 501PWC8735, NUMMI Site Reuse & Revitalization project.*

2.6 *TRI-CITIES LANDFILL AND ALTAMONT LANDFILL CONTRACT AMENDMENTS*

Approval of Amendments to the Tri-Cities Recycling and Disposal Facility and the Altamont Landfill Contracts to Incorporate the Delivery Date of January 1, 2013 for Full Transition of Municipal Solid Waste Disposal from Tri-Cities Landfill to Altamont Landfill

Contact Person:

<i>Name:</i>	<i>Ken Pianin</i>	<i>Kathy Cote</i>
<i>Title:</i>	<i>Solid Waste Manager</i>	<i>Environmental Services Manager</i>
<i>Dept.:</i>	<i>Community Services</i>	<i>Community Services</i>
<i>Phone:</i>	<i>510-494-4582</i>	<i>510-494-4583</i>
<i>E-Mail:</i>	<i>kpianin@fremont.gov</i>	<i>kcote@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager or designee to execute the amendments with Waste Management of Alameda County to the Tri-Cities Recycling and Disposal Facility and the Altamont Landfill authorizing waste deliveries to Tri-Cities Landfill until December 31, 2012, and the full transfer to Altamont Landfill on January 1, 2013.

2.7 HOUSING-RELATED PARKS PROGRAM GRANT APPLICATION

Consideration of a Resolution Authorizing the Submittal of a Housing-Related Parks Program Grant Application to the State Department of Housing and Community Development

Contact Person:

<i>Name:</i>	<i>Irene de Jong</i>	<i>Annabell Holland</i>
<i>Title:</i>	<i>Business Manager</i>	<i>Director</i>
<i>Dept.:</i>	<i>Office of Housing & Redevelopment</i>	<i>Community Services</i>
<i>Phone:</i>	<i>510-494-4510</i>	<i>510-494-4329</i>
<i>E-Mail:</i>	<i>idejong@fremont.gov</i>	<i>aholland@fremont.gov</i>

RECOMMENDATION: Staff requests that the City Council adopt a resolution to:

- 1. Authorize the submittal of a Housing-Related Parks Program grant application to the State Department of Housing and Community Development in an amount for which the City of Fremont is eligible, estimated to be \$122,700, and;*
- 2. Authorize the City Manager, or his designee to execute all necessary program and grant documents.*

2.8 FREMONT POLICE ASSOCIATION MOU

Consideration of a Resolution Approving a New Memorandum of Understanding (2011-2013) with the Fremont Police Association (FPA)

Contact Person:

<i>Name:</i>	<i>Brian Stott</i>	<i>Mark Danaj</i>
<i>Title:</i>	<i>Director</i>	<i>Assistant City Manager</i>
<i>Dept.:</i>	<i>Human Resources</i>	<i>Office of the City Manager</i>
<i>Phone:</i>	<i>510-494-4660</i>	<i>510-284-4000</i>
<i>E-Mail:</i>	<i>bstott@fremont.gov</i>	<i>mdanaj@fremont.gov</i>

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) that commences on July 1, 2011 and expires on June 30, 2013 between the City and the Fremont Police Association (FPA), and authorize the City Manager to execute the MOU.

2.9 *VILLA D'ESTE PLANNED DISTRICT MAJOR AMENDMENT (PLN2011-00161)
Public Hearing (Published Noticed) to Consider Planning Commission
Recommendation to Introduce an Ordinance Adopting a Planned District Major
Amendment to P-2005-80 (Villa D'este) Amending Conditions of Approval Related to
Building and Site Design Modifications for the Remaining 126 Attached Units
Located at the Southeast Quadrant of Ardenwood Boulevard and Paseo Padre
Parkway in Northern Plain Planning Area*

Contact Person:

<i>Name:</i>	<i>Scott Ruhland</i>	<i>Barbara Meerjans</i>
<i>Title:</i>	<i>Associate Planner</i>	<i>Interim Planning Manager</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4453</i>	<i>510-494-4551</i>
<i>E-Mail:</i>	<i>sruhland@fremont.gov</i>	<i>bmeerjans@fremont.gov</i>

RECOMMENDATION:

- 1. Hold public hearing.*
- 2. Find that, consistent with CEQA Guidelines 15162, no significant changes to the project or site circumstances have occurred, nor has new information of substantial importance been discovered, and the previously adopted Mitigated Negative Declaration and Mitigation Monitoring Plan are still valid and no further environmental analysis is required, and find this action reflects the independent judgment of the City of Fremont.*
- 3. Find Planned District Major Amendment is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use and Housing Chapters as enumerated within the staff report.*
- 4. Find the Precise Plans for the project as depicted in Exhibit "A" (precise site plan, floor plans, elevations, engineering plans and landscape plans), fulfills the applicable requirements set forth in the Fremont Municipal Code.*
- 5. Introduce an ordinance approving the Precise Plans as shown on Exhibit "A" More specifically, sheets A1.1-1.27, L1.1-6.11 and C1-7 consisting of precise site plan, floor plans, elevations, engineering plans and landscape plans for Planned District Major Amendment to P-2005-80 be approved, based upon the findings contained in this report and subject to the conditions of approval set forth in Exhibit "B".*
- 6. Direct staff to prepare and the City Clerk to publish a summary of the ordinance)*

2.10 *MOWRY/GUARDINO LENNAR PD – VACANT LOT AT SOUTHEAST CORNER OF
THE INTERSECTION OF MOWRY AVENUE & GUARDINO DRIVE
Public Hearing (Published Notice) to Consider a Planning Commission
Recommendation to Establish a Precise Planned District (P-2011-154), and Approve
a Private Street, a Preliminary Grading Plan, and Tentative Tract Map 8076 for a 16-
unit Duet Development on a Vacant 0.99-acre Parcel (PLN2011-00154)*

Contact Person:

<i>Name:</i>	<i>Stephen Kowalski</i>	<i>Barbara Meerjans</i>
<i>Title:</i>	<i>Associate Planner</i>	<i>Interim Planning Manager</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4532</i>	<i>510-494-4451</i>
<i>E-Mail:</i>	<i>skowalski@fremont.gov</i>	<i>bmeerjans@fremont.gov</i>

RECOMMENDATION:

- 1. Hold public hearing;*
- 2. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Program, and find this action reflects the independent judgment of the City of Fremont;*
- 3. Find the project consistent with the General Plan for the reasons enumerated in this staff report;*
- 4. Find that the Precise Plan for the project as depicted in Exhibit "C" (architectural and landscape plans) and Exhibit "D" (Vesting Tentative Tract Map 8076, Private Street, Preliminary Grading Plan and accompanying civil plans) fulfills the applicable requirements set forth in the Fremont Municipal Code;*
- 5. Introduce an ordinance rezoning the property from Multi-Family Residence (R-3-18) to Planned District (P-2011-154) as shown on Exhibit "B" and establishing the Precise Plan for the Planned District as shown in Exhibit "C" (architectural and landscape plans), based upon the findings and subject to the conditions of approval set forth in Exhibit "F";*
- 6. Approve Vesting Tentative Tract Map 8076 and the accompanying Private Street and Preliminary Grading Plan as shown in Exhibit "D", based upon the findings and subject to the conditions of approval set forth in Exhibit "F";*
- 7. Approve the Affordable Housing Plan authorizing the applicant to pay in-lieu fees to fulfill its obligation under the Affordable Housing Ordinance as proposed in Exhibit "E"; and*
- 8. Approve the proposed removal and mitigation for eight private, protected trees, pursuant to the Tree Preservation Ordinance and as described in the staff report and conditions of approval contained in Exhibit "F"; and*
- 9. Direct staff to prepare and the clerk to publish a summary of the ordinance.*

3. CEREMONIAL ITEMS

- 3.1 Proclamation: National Night Out
- 3.2 Presentation of the California Association of Local Economic Development (CALED) Award of Excellence—grand prize winner—to the City of Fremont acknowledging the innovative Local Business Stimulus Package
- 3.3 Resolution: Honoring Police Officer John Rosette for Thirty Years of Service

4. PUBLIC COMMUNICATIONS

- 4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – None

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS

5.1 CENTER THEATER CONDITIONAL USE PERMIT AMENDMENT APPEAL – 37411 FREMONT BOULEVARD – PLN2011-00093

Public Hearing (Published Notice) to Consider an Appeal of a Planning Commission Denial of a Conditional Use Permit Amendment to Expand the Allowable Uses to Include a Concert Hall, Banquet Facility, Dinner Theater, and Other Assembly Uses and Events Where a Performing Arts Theater and Movie Theater are Currently Permitted in the Centerville Planning Area.

Contact Person:

Name:	Joel Pullen	Barbara Meerjans
Title:	Associate Planner	Interim Planning Manager
Dept.:	Community Development	Community Development
Phone:	(510) 494-4436	(510) 494-4451
E-Mail:	jpullen@fremont.gov	bmeerjans@fremont.gov

RECOMMENDATION:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15301 of the CEQA Guidelines because it is an existing facility.
3. Find Conditional Use Permit Amendment PLN2011-00093 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report. The project also conforms to the goals, objectives, and policies of the Centerville Specific Plan.
4. Grant the appeal and approve Conditional Use Permit Amendment PLN2011-00093, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".

6. REPORT FROM CITY ATTORNEY

6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS

7.1 KATO ROAD GRADE SEPARATION PROJECT AGREEMENTS

Approve and Authorize the City Manager to Execute a Fifth Amendment to the Cooperative Agreement with the Santa Clara Valley Transportation Authority for the Kato Road Grade Separation Project

Contact Person:

Name: Jim Pierson
Title: Director
Dept.: Public Works
Phone: 510-494-4722
E-Mail: jpierson@fremont.gov

RECOMMENDATION: Approve and authorize the City Manager or his designee to execute the fifth amendment to the Cooperative Agreement with the VTA and delegate the authority to the City Manager to approve the extension of the nine-month closure period for Kato Road to 12 months if certain extraordinary conditions occur.

7.2 CLIMATE ACTION PLAN

City Council Review and Consideration of the Draft Climate Action Plan

Contact Person:

Name:	Amy Rakley	Dan Schoenholz
Title:	Associate Planner	Policy and Special Projects Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4450	510-494-4438
E-Mail:	arakley@fremont.gov	dschoenholz@fremont.gov

RECOMMENDATION:

1. Provide input on the draft Climate Action Plan chapters and actions for reducing greenhouse gas emissions in the community and in City operations.
2. Direct staff to complete preparation of the draft Climate Action Plan for adoption concurrent with the Draft General Plan and Environmental Impact Report.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals

- 8.1.1 MAYOR WASSERMAN REFERRAL – Designation of League of California Cities Annual Conference Voting Delegate

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



***2.3 Second Reading and Adoption of an Ordinance of the City Council of the City of the City of Fremont Enacted Pursuant to the Health and Safety Code Section 34193 to Elect and Implement Participation by the City of Fremont and the Redevelopment Agency of the City of Fremont in the Alternative Voluntary Redevelopment Program Pursuant to Part 1.9 of the California Community Redevelopment Law**

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Adopt ordinance.

***2.4 REJECT ALL BIDS RECEIVED FOR CONSTRUCTION CONTRACT FOR THE CENTERVILLE BALLFIELD SYNTHETIC TURF PROJECT - PROJECT NUMBER 8717 (PWC)**

Reject All Bids Received for the Centerville Ballfield Synthetic Turf Conversion Project, 8717 (PWC), and Re-Advertise Project

Contact Person:

Name:	Mark Mennucci	Roger Ravenstad
Title:	Associate Landscape Architect	Senior Landscape Architect
Dept.:	Community Services	Community Services
Phone:	510-494-4530	510-494-4723
E-Mail:	mmennucci@fremont.gov	rravenstad@fremont.gov

Executive Summary: The City received nine bids for the construction of the Centerville Ballfield Synthetic Turf Conversion project on June 16, 2011. The lowest base bid by Star Construction, Inc., was \$848,766.68. Several math errors were noted during review of the bid, and after mathematical corrections, the bid was adjusted down to \$796,557.68. The adjusted bid amount is within the project construction budget, and is approximately 9% below the City estimate. Star Construction did not elect to withdraw their bid due to the mathematical errors. However, irregularities in the low bid and a bid protest have resulted in uncertainty regarding the City's award of the contract. Therefore, to avoid risk and delays associated with potential legal challenges to any contract award, staff recommends the City Council reject all bids received and direct staff to make any necessary revisions to the contract documents and re-bid the construction contract.

BACKGROUND: The Centerville Ballfield Synthetic Turf Conversion is funded with \$2,010,000 of Park Development Impact Fees. This project replaces the existing natural turf with a synthetic turf surface, thereby reducing maintenance costs and the need for repair of damaged turf caused by intensive use of the field by baseball, football, and other sporting events. Additionally, an all-weather, synthetic turf facility allows year-round field rentals, thereby increasing use and revenue generated by approximately four times greater than that of a natural grass field.

This project consists of two parts. The first involves the construction project, which is the subject of this report; the second is the placement of synthetic turf carpet, which Council authorized in a previous action. On April 12, 2011, the City Council authorized the City Manager or his designee to enter into an agreement with FieldTurfUSA, Inc., and to execute a contract through CMAS contract #4-06-78-0031A, between the State of California and FieldTurfUSA, Inc., for a contract amount up to \$344,441, which includes administrative fees for the manufacture and installation of synthetic turf for the Centerville Ballfield Project. At the same meeting, the City Council authorized the City Manager or designee to execute an agreement for maintenance services at Centerville Ballfield and Irvington Ballfield for no charge, to FieldTurfUSA's FieldCare Division.

PROJECT DESCRIPTION: The Centerville Ballfield Synthetic Turf Conversion project is located in Centerville Community Park along Hasting Drive, adjacent to the Centerville Community Center. The Centerville Ballfield Synthetic Turf Conversion project will convert the existing grass ballfield to synthetic turf, and includes the site improvements to improve drainage; capture subsurface runoff and

infiltrate into the subgrade; improve the storm drain system; install a pervious subbase and leveling course to support the synthetic turf field; miscellaneous site concrete work; new chain link fencing; site irrigation and planting; and, upgraded sports field, pedestrian and parking lot lighting.

Bid Results: The Centerville Ballfield Synthetic Turf Conversion project was publicly advertised for bid on May 20, 2011. The City received nine (9) bids for the construction of the project on June 16, 2011. The apparent low bid was submitted by Star Construction, Inc., for \$796,557.68, after mathematical corrections, and is approximately 9% below the project estimate of \$867,000. Star Construction did not submit a request to withdraw their bid within the required five days from bid opening time period. All bidders and their respective bid amounts are shown below:

<i>Contractor</i>	<i>Rank</i>	<i>Base Bid</i>
Star Construction	1	\$796,557.68*
Permagreen Hydroseeding	2	\$855,724.65*
Elite Landscaping, Inc.	3	\$863,355.47*
OC Jones & Sons, Inc.	4	\$877,992.40
Granite Rock Co. DBA Pavex Construction Division	5	\$923,018.50
McGuire & Hester, Inc.	6	\$934,531.15
Dominguez Landscaping, Inc.	7	\$937,172.69*
Suarez and Munoz Construction, Inc.	8	\$966,089.90
Adreini Bros, Inc.	9	\$974,115.00

*Bids Mathematically Corrected

The City posted the Notice of Intent to Award to Star Construction, Inc., on Tuesday, June 21, 2011. A bid protest was received on Friday, June 24, 2011, from the second-ranked bidder, Perma-Green Hydroseeding, Inc. This protest letter was followed by a detailed protest letter, from Last & Faoro, the attorney for Perma-Green Hydroseeding, Inc. Both letters are attached to this report.

The protest is based on the fact that Star Construction listed R&R Electric as a subcontractor even though R&R's license was expired March 31, 2011. Perma-Green Hydroseeding claims that by listing an unlicensed subcontractor, Star Construction submitted a bid that is nonresponsive and nonresponsible.

Star Construction, Inc., has represented they do not need to list a licensed subcontractor, because: 1) the subcontractor's license is under suspension and in the process of being reactivated; 2) Star may substitute another subcontractor for the unlicensed subcontractor, with approval from the City; and 3) Star Construction, as a licensed "A" general contractor, may chose to self-perform the electrical work itself, provided it uses properly certified staff.

Staff has concluded that there is some merit to the arguments of both Perma-Green Hydroseeding, Inc., and Star Construction. However, it is not clear that either one would prevail. An award by the City to either contractor could result in legal challenge that could potentially delay the project and result in damages against the City.

Given the uncertainty surrounding the award of the contract and the possibility of significant project delays, staff recommends the City Council reject all bids received and direct staff to make any necessary revisions to the contract documents and re-bid the construction contract.

Proposed Project Schedule with Re-bid: Construction was anticipated to begin in September 2011, with completion anticipated in early January 2012. By re-bidding the project, staff anticipates awarding the contract during the Council recess in August, and beginning construction in October. Barring weather delays, completion should be in March 2012.

FISCAL IMPACT: The City Council allocated \$2,010,000 of Park Development Impact Fees to the project in the 2009/10-2013/14 Capital Improvement Program budget.

1.	Total funds appropriated to the project:	
	540 Park Facilities Development Impact Fees	\$2,010,000
2.	Project Expenses to Date:	
	Project Management and Design	\$167,000
	Electrical and Geotechnical Consultants	\$47,000
3.	Remaining Planned Expenditures (For Construction):	
	Estimated Construction Bid	\$867,000
	Synthetic Turf Purchase and Installation (previously approved)	\$343,800
	Construction Administration (Estimated)	<u>\$147,970</u>
4.	Estimated Remaining Funds	\$437,230

ENVIRONMENTAL REVIEW: The project is categorically exempt as a Class 1 facility (Replacement and Reconstruction of Existing Facilities) under Section 15301 of the Guidelines of the California Environmental Quality Act. A notice will be filed upon award of the construction contract to a general contractor.

ENCLOSURE:

- [Letter from Perma-Green Hydroseeding, Inc.](#)
- [Letter from Last & Faoro](#)

RECOMMENDATION: Reject all bids received for Construction Contract for the Centerville Ballfield Synthetic Turf Conversion Project, City Project No. 8717 (PWC), and direct staff to revise the contract documents as necessary and re-advertise the contract.

***2.5 CONTRACT AMENDMENT WITH PERKINS+WILL FOR \$65,000 FOR WARM SPRINGS/SOUTH FREMONT AREA STUDIES**

Authorize the City Manager or Designee to Amend the Contract with Perkins+Will for \$65,000 for Planning and Technical Studies Related to Warm Springs/South Fremont Area Studies

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Executive Summary: In July 2010, the City Council authorized staff to enter into a contract with Perkins+Will to lead a multi-disciplinary team to prepare planning and technical studies for the South Fremont/Warm Springs Area Studies for a cost not-to-exceed \$333,000. These studies progressed successfully until January 2011, when the City learned of Union Pacific Railroad's (UPRR) purchase of the two large, vacant NUMMI properties comprising 167 acres of the 850 acre project area. The studies were put on hold at that time to give the City an opportunity to understand UPRR's intended use of these lands. After participating in a number of conversations with UPRR, the City has developed a working relationship with the railroad and now has a general idea of how these lands may be used for railyard purposes.

In June 2010, City consultants for these studies prepared revised scopes of services to address changes related to UPRR's presence on the former NUMMI properties. The proposed contract amendment includes some changes to address railyard operations and a process to finalize the studies. Once executed, staff anticipates the studies will be concluded by December 2011. Staff recommends the City Council authorize the City Manager or designee to amend the contract with Perkins+Will to a new not-to-exceed amount of \$395,000.

BACKGROUND: The initial \$333,000 funds supporting the consultant work for these studies were provided to the City through a U.S. Economic Development Administration (EDA) grant. As part of the grant, the City was required to fund a 20% match totaling \$83,250, which has been used to cover staff time spent on the project, for a total project not-to-exceed cost of \$416,250.

The studies were initiated in August 2010, and aggressively progressed on schedule through December 2010, when land use alternatives were presented to the community and Council. At this point, the studies were about half completed. However, in late January 2011, when the City learned of Union Pacific Railroad's purchase of the two large, vacant NUMMI parcels, the studies were put on hold to allow time to determine the potential development impacts of rail uses.

Since January, the City has developed a working relationship with UPRR. UPRR has provided a general range of railyard and related operations that may occur on these lands. Additionally, UPRR has agreed to participate on the remaining components of the studies.

In June, staff re-engaged the consultant team, including requesting some additional work to the studies to address the UPRR railyard operations. These additional work items increase the consultant's budget by an additional \$65,000, for a new not-to-exceed amount of \$395,000. Staff anticipates work on the studies to start immediately, with a new completion date of December 2011.

DISCUSSION/ANALYSIS:

Scope of Services: The initial scope of services for this project covered four studies anticipated to be used by the City to direct future policy, land use, infrastructure, economic and related decisions for land within the study area, ultimately culminating in the preparation of a Community Plan. The four studies include the following: 1) Economic and Market Strategic Plan; 2) Land Use Alternatives Study; 3) Infrastructure and Cost Analysis; and 4) a Financial Assessment. Below, each of these studies is described, including the status of the individual studies when put on hold, and the proposed amendment/additional work items for each study.

1. ***Economic and Market Strategic Plan:*** This plan will identify the short-term market (immediate to 10 years timeframe) for the site, as well as recommend how best to accommodate the potential future market uses over the longer term (up to 30 years).
 - Status: Administrative draft study delivered in January 2011.
 - Amendment: Additional required work includes brief mention of rail logistics industries.
2. ***Land Use Alternatives Study:*** This study will evaluate and recommend land use policy options for the type and level of development over the middle- and long-term that can accommodate market changes over time.
 - Status: Administrative draft study delivered in January 2011.
 - Amendment: Additional required work includes minor revisions to land use alternatives and corresponding changes to the land use study to reflect potential new development square footage and jobs calculations.
3. ***Infrastructure and Cost Analysis:*** This analysis will identify the physical opportunities and constraints for developing the study area, including an assessment of critical infrastructure needs for each land use alternative.
 - Status: Existing conditions work completed. Study not drafted.
 - Amendment: No additional work. All remaining work within original scope of services.
4. ***Financial Assessment:*** This assessment will examine the financial feasibility of the land uses being considered.
 - Status: Existing conditions work completed. Study not drafted.

- Amendment: No additional work. All remaining work within original scope of services.

Schedule: Before the studies were put on hold, the anticipated completion date was June 2011. Given the five month pause in completing the studies, staff now anticipates the studies will be complete by December 2011, with consultant work initiating as soon as the contract amendment is executed. A final schedule of meetings and public participation will be specified within the contract; however, staff anticipates that the process will include one community workshop and two Council presentations.

FISCAL IMPACT: The additional \$65,000 required to complete these studies exceeds the authorized EDA grant amount of \$333,000. The initial City grant match of 20% is funded by an unallocated balance from the 501 Capital Improvement Fund. EDA has confirmed that no additional funds are available to cover these additional expenses. Staff proposes to fund this additional consultant work by requesting Council to appropriate \$65,000 from the Capital Improvement Fund 501 unallocated fund balance.

ENVIRONMENTAL REVIEW: The Warm Springs/South Fremont studies are statutorily exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guideline 15262, *Feasibility and Planning Studies*. No environmental review is required.

ENCLOSURE: None

RECOMMENDATION:

1. Staff recommends the City Council authorize the City Manager or designee to amend the contract with Perkins+Will to a not-to-exceed amount of \$395,000.
2. Approve the appropriation of \$65,000 from the Capital Improvement Fund 501 unallocated fund balance to 501PWC8735, NUMMI Site Reuse & Revitalization project.

***2.6 TRI-CITIES LANDFILL AND ALTAMONT LANDFILL CONTRACT AMENDMENTS**
Approval of Amendments to the Tri-Cities Recycling and Disposal Facility and the Altamont Landfill Contracts to Incorporate the Delivery Date of January 1, 2013 for Full Transition of Municipal Solid Waste Disposal from Tri-Cities Landfill to Altamont Landfill

Contact Person:

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Executive Summary: The City is in the midst of transitioning solid waste disposal from the Tri-Cities Recycling and Disposal Facility (Tri-Cities Landfill), which is nearly at capacity, to the Altamont Landfill. Currently, solid waste from the Fremont Transfer Station is disposed of at both landfills, with approximately 25% of the material going to the Tri-Cities Landfill and the balance of the waste going to the Altamont Landfill. Full transition to the Altamont Landfill was expected to occur by December 2011; however, the Tri-Cities Landfill has approximately 12-18 months of remaining capacity and must continue to receive waste until the landfill is properly contoured for final closure. Staff is therefore recommending that the City Council authorize the City Manager to execute amendments with Waste Management of Alameda County to the Tri-Cities Landfill and Altamont Landfill contracts to continue the transition period through December 31, 2012, by which date the final transition to Altamont Landfill will occur.

BACKGROUND: The City currently has two landfill disposal contracts in effect. The short-term disposal agreement at Tri-Cities Landfill allows for waste delivery through December 31, 2011, or until the site has reached its permitted capacity. A long-term disposal agreement is in effect at the Altamont Landfill that provides for 20 years of waste disposal after the Tri-Cities Landfill reaches capacity and the City fully transitions to the Altamont Landfill. The Tri-Cities Landfill has begun the initial phases of final landfill closure, but requires additional waste materials to adequately fill and shape the landfill so the final landfill cover will have appropriate sloping for the long-term integrity of the site. Waste Management of Alameda County, the landfill operator, has requested that the Tri-Cities Landfill continue to receive waste as necessary in 2012, but no longer than December 31, 2012.

DISCUSSION/ANALYSIS: All waste is initially delivered to the Fremont Recycling & Transfer Station, where it is sorted and non-recyclable residue is then consolidated for transfer to the landfill. As of July 1, 2010, approximately 75% of solid waste has been delivered to the Altamont Landfill, and 25% to Tri-Cities Landfill. This phased transition has been beneficial in preparing for the longer transfer of solid waste to the Altamont Landfill while allowing for a necessary flow of waste to go to the Tri-Cities Landfill to achieve the final contours.

The City has received written notice from Waste Management of Alameda County that at current flow rates the Tri-Cities Landfill will require additional material in 2012 to reach the final contours. Staff believes it is advantageous to amend the current landfill agreements to allow delivery of solid waste beyond December 31, 2011, instead of forfeiting unused disposal capacity. Rather than importing other

solid waste materials, such as soil for the final fill, continued delivery of residue from the Fremont transfer station provides continuity of waste material, as opposed to heavier more dense materials which may settle at a different rate and impact the stability of the final cover system. Using the remaining capacity reduces transportation impacts and green house gas generation by avoiding the longer hauls to the Altamont Pass for a portion of the waste stream. The City also benefits by deferring the start of the 20-year disposal term at Altamont Landfill, which begins when 100% of the City's waste is delivered to that site. This provides for the long term disposal needs of the City at very favorable disposal rates.

Authorizing waste deliveries to the Tri-Cities Landfill beyond December 31, 2011 requires amending the Tri-Cities Recycling and Disposal Facility and Altamont contracts. Incorporation of the revised delivery date of January 1, 2013, for full transition of solid waste to Altamont Landfill will be included in both the Tri-Cities Landfill and Altamont Landfill disposal agreements.

FISCAL IMPACT: There will be no impact on the City's General Fund.

ENVIRONMENTAL REVIEW: None required.

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or designee to execute the amendments with Waste Management of Alameda County to the Tri-Cities Recycling and Disposal Facility and the Altamont Landfill authorizing waste deliveries to Tri-Cities Landfill until December 31, 2012, and the full transfer to Altamont Landfill on January 1, 2013.

***2.7 HOUSING-RELATED PARKS PROGRAM GRANT APPLICATION**

Consideration of a Resolution Authorizing the Submittal of a Housing-Related Parks Program Grant Application to the State Department of Housing and Community Development

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Executive Summary: The State Department of Housing and Community Development (HCD) released a Notice of Funding Availability and is accepting applications (due July 29, 2011) for the Housing-Related Parks (HRP) Program. This incentive grant program, totaling \$20 million in available funding for calendar year 2010, is designed to encourage cities and counties to develop new residential housing by rewarding those that approve housing affordable to lower income households and are in compliance with the State housing element law. The funds can be used for creation of new parks or rehabilitation/improvements to existing parks. The City of Fremont is eligible to apply for a \$122,700 grant. Staff recommends that the City Council adopt a resolution authorizing the submittal of a grant application to HCD.

BACKGROUND: The State Department of Housing and Community Development is accepting applications for the Housing-Related Parks Program, which are due July 29, 2011. This incentive grant program encourages the development of new residential housing by rewarding cities and counties which approve housing affordable to lower income households and are in compliance with the State housing element law. The HRP Program is funded through Proposition 1C and awards funds on a per-bedroom basis for each residential unit affordable to very low and low income households with documented housing starts during the program year. Grant funds may be used to construct, rehabilitate or acquire capital assets for parks and recreation projects that benefit the community and add to the quality of life for its residents.

The HRP program is noncompetitive. There is no maximum award; however, if eligibility for funds exceeds the amount of funding available in any round, HCD may reduce all grants proportionally. In the event the program is undersubscribed, any unused funds will roll over to the next program year. The four threshold requirements for grant consideration are the following: (1) Housing Element compliance by December 31, 2010; (2) submittal of Annual Progress Report on Housing Element for 2009 by December 31, 2010; (3) documented housing starts for HRP Program purposes evidenced by completed foundation inspections during calendar year 2010; and (4) meeting the minimum grant amount of \$75,000, including any bonus awards for qualifying housing units. Fremont meets all the threshold requirements.

Funds will be awarded on a per-bedroom basis. The base grant award is \$500 per bedroom affordable to low income households and \$750 per bedroom affordable to very-low income households. Per-bedroom bonuses are awarded as follows:

- \$250 for extremely low income units;
- \$250 for infill units;
- \$100 if the park project is located in a disadvantaged community;
- \$100 if the park project is located in a park-deficient community;
- \$100 if the park project supports infill development or regional blueprint conformance;
- \$50-\$75 for regional housing needs allocation progress as determined by HCD.

Based on the number of qualifying units and documented bonus award eligibility, eligible applicants may receive up to \$1,100 per bedroom in qualifying low income units, and up to \$1,625 per bedroom in qualifying very low income units.

For 2010 affordable housing activity, the City is eligible to apply for a grant of \$122,700 for Main Street Village in Irvington, the only affordable housing development that meets the project eligibility requirements for the program year. Main Street Village has 63 qualifying affordable apartments consisting of studio (counted as a one-bedroom unit for grant purposes), one-, two- and three-bedroom apartments. All 63 apartments are very-low income units (comprising a total of 102 bedrooms), which include 32 extremely low-income units (with a total of 42 bedrooms). Fremont's anticipated grant amount is calculated below:

ANTICIPATED GRANT AMOUNT FOR MAIN STREET VILLAGE				
Award Type	Affordability	# Bedrooms	Award Amount	Anticipated Grant Amount
Base	VLI*	102	\$750	\$76,500
Bonus-ELI	ELI**	42	\$250	\$10,500
Bonus-Infill	VLI	102	\$250	\$25,500
Bonus-Supporting Infill	VLI	102	\$100	\$10,200
Total				\$122,700

*VLI – Very low-income income (50% or below median area income);

**ELI – Extremely low-income (30% or below median area income).

The HRP application is due to HCD by July 29, 2011. Funds will be available once the apartments are documented to be complete (anticipated in Fall 2011) and funds must be spent by June 30, 2015. Once the HRP funds are secured, staff will return to Council to appropriate the funds to a park project.

FISCAL MPACT: If the grant is approved, the City will receive grant funding for a park project.

ENVIRONMENTAL REVIEW: The current action does not constitute a project under CEQA as defined in section 15378 of the CEQA Guidelines. Therefore, no environmental review is required.

ENCLOSURE:

- [Proposed Resolution](#)
- [Housing-Related Parks Program Guidelines](#)

RECOMMENDATION: Staff requests that the City Council adopt a resolution to:

1. Authorize the submittal of a Housing-Related Parks Program grant application to the State Department of Housing and Community Development in an amount for which the City of Fremont is eligible, estimated to be \$122,700, and;
2. Authorize the City Manager, or his designee to execute all necessary program and grant documents.

***2.8 FREMONT POLICE ASSOCIATION MOU**

Consideration of a Resolution Approving a New Memorandum of Understanding (2011-2013) with the Fremont Police Association (FPA)

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Executive Summary: In June 2011, the City of Fremont completed negotiations with the Fremont Police Association (FPA) for a two-year labor agreement. This bargaining unit has 164 members and represents sworn police officers and sergeants. The proposed MOU contains the following significant changes from the prior agreement term: total compensation reductions, a second tier retirement benefit for new employees, a reduction in health benefit allowance alternative benefits and compensation plan, a reduced cap on retiree medical benefits for new employees, and work schedule changes resulting in increased operational efficiency. Otherwise, the provisions of the former MOU are generally carried forward.

BACKGROUND: On March 1, 2011, the City Council adopted labor relations guidelines to support City staff's efforts to address the City's ongoing General Fund structural imbalance caused by rising personnel costs and recession-related decreased revenue. The guidelines directed staff to address both short-term imbalances and the long-term fiscal sustainability of the City as follows:

1. Focus on the cost of total compensation while considering the City's fiscal condition and revenue projections
2. Use short-term and long-term strategies to curtail escalating benefit costs, such as wellness programs and other cost containment initiatives
3. Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction set by the City Council
4. Remain mindful of other increasing costs, including the retiree healthcare liability
5. To the extent possible, preserve the City's ability to be a competitive employer in the local labor market
6. Explore new service delivery models that align with both the priorities of the community and the City Council and result in operational efficiencies

The City and FPA bargaining teams held five negotiations meetings and mutually declared impasse on June 16, 2011. An impasse meeting was held on June 22, 2011, but the two sides were still not able to reach agreement and elected to participate in mediation in accordance with the City's Employer-Employee Relations Resolution.

The parties held a mediation session on June 30, 2011, with Annie Song-Hill of the California State Mediation and Conciliation Service serving as mediator. With the mediator's assistance, the parties reached tentative agreement, which was subsequently ratified by the FPA on July 10/11, 2011.

DISCUSSION/ANALYSIS: Primary Memorandum of Understanding Provision Changes:

1. *Total Compensation Reduction:*
Effective July 3, 2011, salaries will decrease by 4.25%.
2. *Second Tier Retirement Benefit:*
Effective January 1, 2012, new employee retirement benefits will consist of three percent (3%) at fifty-five years of age (55) formula based on a three (3) highest years of pay average.
3. *Health Benefit Allowance Alternative Benefits and Compensation Plan:*
Effective June 30, 2013, health benefit allowance alternative benefits cash back will be capped at a maximum of five hundred eighty dollars (\$580) per month per employee.
4. *Retiree Medical Benefit:*
Effective January 1, 2012, retiree medical benefits for newly hired employees will accrue at ten dollars (\$10.00) per month per year of service up to 24 years, increasing to five hundred dollars (\$500) per month with 25 or more years of service.
5. *Patrol Schedule Adjustment:*
Move from eleven hour rotational shifts to a ten hour rotational shift schedule (2,080 hours per year).

FISCAL IMPACT: Fiscal Impact of the Memorandum of Understanding Changes:

MOU Change	Anticipated Fiscal Impact
Compensation Reduction	(\$1,078,000)
Health Benefit Allowance Reduction	(\$119,000)
Patrol Schedule Adjustment	Operational Efficiency Improvement (\$500,000 estimated savings)
Retiree Medical Benefit Reduction	Long Term Structural Savings
Second Tier Retirement	Long Term Structural Savings

The proposed MOU satisfies Council direction by reducing total compensation, pursuing long term fiscal sustainability via changes to health and retirement benefits, and improving operational efficiencies via scheduling changes that will reduce overtime expenditures. The agreement is the result of a productive partnership between management staff and the bargaining unit to help address the City's unprecedented structural budget imbalance.

ENVIRONMENTAL REVIEW: None

ENCLOSURE: [Draft Resolution](#)

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) that commences on July 1, 2011 and expires on June 30, 2013 between the City and the Fremont Police Association (FPA), and authorize the City Manager to execute the MOU.

***2.9 VILLA D'ESTE PLANNED DISTRICT MAJOR AMENDMENT (PLN2011-00161)
Public Hearing (Published Noticed) to Consider Planning Commission Recommendation to
Introduce an Ordinance Adopting a Planned District Major Amendment to P-2005-80
(Villa D'este) Amending Conditions of Approval Related to Building and Site Design
Modifications for the Remaining 126 Attached Units Located at the Southeast Quadrant of
Ardenwood Boulevard and Paseo Padre Parkway in Northern Plain Planning Area**

Contact Person:

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Executive Summary: Pulte Homes is the current owner of the Villa D'este project. Villa D'este Planned District was approved in 2006 for 33 single-family homes and 243 multi-family homes. The single-family homes have all been constructed and 114 of the 243 multi-family homes have been constructed. The community building and surrounding site improvements have also been completed. Pulte has proposed an amendment to the Planned District to modify the building design, and slight modifications to site design, for the remaining multi-family homes. The street network, building footprints, landscape design and other features remain the same as previously approved. The size of the units was modified slightly but is still within the range of the previous approvals. Three less units will be constructed as a result of this amendment. Pulte has determined that the current product type has not been well received by the targeted market because of the odd configuration of the floor plans in that the first floor areas do not provide sufficient space to meet the demands of today's consumer. A 3-story, alley loaded product is still proposed but the living areas have been moved to the second floor providing a more efficient layout. The change in layout has resulted in exterior changes to the design and slight modification to the site design necessitating the request for a major amendment to the Planned District. The Planning Commission considered the item at their June 23, 2011 public hearing and recommended the project (6-0-0-1) to the City Council.

BACKGROUND: The original Planned District, P-2005-80 was approved on July 26, 2005 as part of Housing Element Implementation Program 21. A Planned District Major Amendment (PLN2006-00172) to P-2005-80 for site plan and architectural approval and Vesting Tentative Tract Map 7735 was approved by City Council on May 23, 2006 for the construction of 276 residential units and associated site improvements. John Laing Homes was the applicant and property owner at that time. Pulte Homes acquired the property in 2010 and has been constructing the remaining units and completing the project.

DISCUSSION/ANALYSIS:

Project Description

The proposed project is a request for a Planned District Major Amendment to modify the approved building design for the remaining multi-family buildings. Minor site modifications to accommodate the new building design are also proposed. Villa D'este includes 243 multi-family homes, 114 have already been constructed and Pulte Homes will construct the 126 remaining homes in 23 buildings for a total of 240 multi-family homes. Due to the redesign of the buildings the project will result in 3 less homes than

originally approved. A lot line adjustment will be needed to accommodate the project, as well as utility easement vacations and new utility easements.

The originally approved project includes units that range in size from approximately 1,400-1,900 square feet in three different floor plans. The proposed modification includes units that range from 1,200 to 1,990 square feet in four different floor plans increasing the options and home sizes for the targeted market. The buildings will be a similar 3-story, alley loaded configuration but interior floor plans have been modified to move the living areas to the second floor and provide a more efficient layout. Some buildings have side garage access for the homes on the ends of the buildings. This feature is new to the project and will necessitate new side access driveways that were not previously included. The driveways act as auto courts and will include decorative paving. Staff finds this change minimal and that it has been incorporated into the project in an aesthetically pleasing, efficient manner.

Staff finds that the proposed modification to buildings and floor plans, and slight change to the site design are in keeping with the general design qualities and parameters originally approved because the number of overall homes is less than approved and building footprints and building height have not changed.

General Plan Conformance

The existing General Plan land use designation for the project site is High Density Residential, 23-27 units/acre. The proposed project is consistent with the existing General Plan land use designation for the project site because the project still meets the minimum density requirements. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

The following General Plan Goals, Objectives and Policies are still applicable to the proposed project:

- *Housing Goal 2 – High quality and well-designed new housing of all types throughout the City.*
- *Land Use Goal 1 – New housing development while conserving the character of the City's existing single family residential neighborhoods.*

The project remains consistent with these goals because the project provides variety in housing type by offering four floor plans that are well-designed. Nearby single-family areas, off-site and adjacent to the project remain unchanged.

- *Land Use Policy 1.23 – A variety of unit types and sizes shall be encouraged within each multi-family project.*

The project conforms to this policy because new architectural styles are proposed, each with a variety of floor plans and unit sizes.

- *Land Use Policy 1.25 – Where several multi-family projects are on adjacent parcels of land, a variety of architectural and site design treatments shall be encouraged. However, an architectural or landscape design theme for several parcels may be appropriate.*

The project conforms to this policy because new architectural styles have been designed independently although in a manner to complement each other. The range in architectural styles will help to reduce the monotony sometimes associated with phased housing developments. A general landscape theme has been provided for the project that complements the entire site. Overall, the change in building and site design does not alter consistency with the General Plan.

Zoning Regulations

Parking

All of the units include two-car garages as previously approved. There is no change to the guest parking provided.

Inclusionary Housing

The project and proposed Planned District Amendment does modify the Inclusionary Housing Agreement to provide 55 below market rate (BMR) units. Twelve BMR units have already been constructed and Pulte will provide the remaining 43 units. The remaining units will be constructed in phases as the project is completed. (Condition A-17)

Site Planning

The site plan for the project remains the same. The primary streets, utilities and infrastructure have already been installed per the tract improvements and the proposed amendment does not alter the vehicular circulation network. All 33 single-family homes and 11 second units have been constructed. 114 multi-family units have also been constructed. Proposed building locations for the remaining units are the same. Pedestrian connections are generally provided as previously approved and some new pedestrian connections have also been provided.

The largest change to the site plan is the addition of six new driveways/auto courts that provide side access to nine of the buildings. The side driveways provide garage access to the reconfigured buildings. Each auto court provides access to two garages and thus will not be heavily traveled. This change has replaced some landscaped areas with impervious surface area and pedestrian access locations although new access in different locations has been provided. The slight changes to the site design will require some utility relocation and a lot line adjustment. Prior to building permit issuance, the applicant will be required to vacate existing easements and dedicate new public utility easements, and record the lot line adjustment (Conditions E-9, E-10).

Architecture

The buildings have been redesigned to maximize floor area and make more efficient use out of the floor plans. The remaining buildings to be constructed consist of 3, 5, 6 and 7-unit buildings. The building footprints and heights have not changed, although the form and bulk of the buildings has changed to allow for the proposed modifications. The new design consists of three architectural styles, all somewhat similar, and three color palettes that will help add variety to the new buildings. The building design is contemporary in style and incorporates simple lines, form and massing. Buildings materials include stucco as the primary material and brick/stone veneer as the secondary material. Architectural details add tertiary materials and another level of interest. These include louvered shutters, decorative metal railings and grilles, wood fascia, wood railings, decorative light fixtures and decorative garage doors. Roof materials consist of concrete tiles.

Green Building Technologies

The project will be required to comply with CalGreen, the State's Green Building Code, and the City of Fremont Tier 1 requirements.

Open Space/Landscape Design

Slight modifications are proposed to the approved landscape design. The modifications result from the additions of side access driveways associated with the new product type. There is no change to the private open space areas. Additional conditions have been added to the project to ensure conformance with new landscape development requirements (Bay Friendly Landscaping) and to ensure the original intent is achieved (Landscape Conditions 1-8).

Circulation

There is no change to the approved circulation system.

Grading & Drainage

There is no change to the approved grading or storm drain system. Stormwater treatment bio-retention locations will accommodate the new building locations and any increase in impervious runoff. Existing stormwater treatment mechanical units were designed with extra capacity for slight increase of impervious runoff. Any additional runoff increase above the design capacity will be diverted or mitigated with other stormwater treatment measures.

FISCAL IMPACT: Costs associated with processing the project are funded wholly by the applicant, as are costs associated with development of the project. Because the project includes a Homeowners Association (HOA), costs associated with the on-going maintenance of the project's improvements (e.g., streets, landscaping, common areas, lighting) are all borne by the HOA.

ENVIRONMENTAL REVIEW: In 2006, a comprehensive environmental analysis of the project occurred pursuant to the California Environmental Quality Act (CEQA). That analysis identified concerns regarding potential impacts in the topics of air quality, biology, geology/soils, noise, and traffic/transportation. The adopted Mitigated Negative Declaration includes mitigation measures, which reduce the identified impacts to less-than-significant levels. These mitigation measures have been maintained as conditions of approval for the project. Implementation of these mitigation measures is ongoing and will be completed upon completion of the project.

CEQA Guideline 15162 states that no subsequent analysis is required unless the lead agency determines that: 1) substantial changes to the project are proposed; 2) substantial changes in the circumstances of the project have occurred potentially resulting in new or increased severity of previously identified impacts; or 3) new information of substantial importance that was not known and could not have been known when the prior environmental determination was made.

The proposed Planned District Major Amendment does not change the findings of the prior environmental analysis in that it would result in identical use and development of the site. No substantial changes in the circumstances for impact analysis have occurred nor has any new information that could not have been known when the prior analysis was completed been discovered. The proposed changes are consistent with the adopted Mitigated Negative Declaration and Mitigation Monitoring Plan and no further analysis is required.

ENCLOSURES:

- [Draft Ordinance](#)
- [Exhibit "A" - Site Plan, Elevations, Floor Plan, Landscape Plans, Engineering Plans](#)
- [Exhibit "B" - Findings and Conditions of Approval](#)
- [Informational 1 - Color and Material Rendering](#)
- [Informational 2 - Location Maps](#)
- [Informational 3 - Draft Minutes](#)

RECOMMENDATION:

1. Hold public hearing.
2. Find that, consistent with CEQA Guidelines 15162, no significant changes to the project or site circumstances have occurred, nor has new information of substantial importance been discovered, and the previously adopted Mitigated Negative Declaration and Mitigation Monitoring Plan are still valid and no further environmental analysis is required, and find this action reflects the independent judgment of the City of Fremont.
3. Find Planned District Major Amendment is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use and Housing Chapters as enumerated within the staff report.
4. Find the Precise Plans for the project as depicted in Exhibit "A" (precise site plan, floor plans, elevations, engineering plans and landscape plans), fulfills the applicable requirements set forth in the Fremont Municipal Code.
5. Introduce an ordinance approving the Precise Plans as shown on Exhibit "A" More specifically, sheets A1.1-1.27, L1.1-6.11 and C1-7 consisting of precise site plan, floor plans, elevations, engineering plans and landscape plans for Planned District Major Amendment to P-2005-80 be approved, based upon the findings contained in this report and subject to the conditions of approval set forth in Exhibit "B".
6. Direct staff to prepare and the City Clerk to publish a summary of the ordinance.

***2.10 MOWRY/GUARDINO LENNAR PD – VACANT LOT AT SOUTHEAST CORNER OF THE INTERSECTION OF MOWRY AVENUE & GUARDINO DRIVE**
Public Hearing (Published Notice) to Consider a Planning Commission Recommendation to Establish a Precise Planned District (P-2011-154), and Approve a Private Street, a Preliminary Grading Plan, and Tentative Tract Map 8076 for a 16-unit Duet Development on a Vacant 0.99-acre Parcel (PLN2011-00154)

Contact Person:

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Dept.:	Community Development	Community Development
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Executive Summary: The applicant is requesting approval of a rezoning of a vacant 0.99-acre parcel to a new Precise Planned District (P-2011-154), as well as a Private Street, Preliminary Grading Plan, and Vesting Tentative Tract Map No. 8076 to create a 16-unit duet development on the property. The proposed development would consist of eight (8) separate buildings containing two individually-owned units each (thus the term “duet”). The units will measure two stories in height and range in size from 1,483 to 1,663 square feet with 3-4 bedrooms and two-car garages in each.

On June 23, 2011, the Planning Commission considered the proposal and recommended Council approval in accordance with staff’s recommendation. Staff recommends that the City Council introduce an ordinance rezoning the subject property and adopting the Precise Planned District as shown in Exhibit “C”, and approve the Vesting Tentative Tract Map, Private Street, and Preliminary Grading Plan as shown in Exhibit “D”, and the Affordable Housing Plan as shown in Exhibit “E”, based on the findings and subject to the conditions of approval contained in Exhibit “F”.

BACKGROUND: The subject property was previously used as an orchard dating as far back as the 1930’s through the mid 1990’s with an associated fruit stand also occupying the property from the early 1970’s through the mid 1990’s. By the late 1990’s, the fruit stand and most of the remaining fruit trees were cleared from the property. Since that time, the only other use of the property has been as a seasonal Christmas tree lot. There is no history of any land use entitlements or building permit applications associated with the property.

DISCUSSION/ANALYSIS:

Project Description: The applicant is requesting approval of a rezoning of a vacant 0.99-acre parcel to a Precise Planned District, a Private Street, a Preliminary Grading Plan, and a Vesting Tentative Tract Map (No. 8076) for a 16-unit duet development. The subject parcel is located on the southeast corner of the intersection of Mowry Avenue (State Highway Route 84) and Guardino Drive. The proposal features eight separate buildings containing two individually-owned units each and measuring two stories with a maximum height of approximately 27 ½ feet. The lots will range in size from 1,738 to 2,594 square feet, while the units will range in size from 1,483 to 1,663 square feet and contain three bedrooms, with an optional 4th bedroom or loft space in each. Attached two-car garages will also be provided for each unit.

The two end units abutting Guardino Drive (Lots 1 and 16) will be oriented outward toward the public sidewalk, while all other units and all 16 garages will be oriented toward an inner “T”-shaped private street running the length of the development (see Exhibit “C”, Sheet TM-1). All of the units will have a fully enclosed backyard which will come equipped with a concrete patio, small lawn area, and 1-2 small trees for privacy and shade. A centrally-located five-space guest parking area will be provided, along with a stormwater treatment area at the intersection of the “T” in which a 48-inch box Yarwood Sycamore (also known as London Plane) tree will be planted as an aesthetic focal point for the development.

Off-site improvements will include a new curb cut and driveway along Guardino Drive at the entrance to the proposed private street. New street trees will also be planted in the existing sidewalk planters along Guardino that currently do not have trees. Full public improvements and street trees are already in place along the Mowry Avenue property frontage, but the applicant will be required to repair and/or replace any damaged improvements for the length of both street frontages adjacent to the project site.

General Plan Conformance: The existing General Plan land use designation for the project site is Medium Density Residential 15-18 dwelling units per acre. The proposed density of the project is 16.2 units per acre, consistent with the density prescribed by the General Plan. In addition, the proposal is consistent with the following goals of the Land Use, Health and Safety, and Housing Elements of the General Plan:

Land Use Goal 1: New housing development while conserving the character of the City’s existing single-family residential neighborhoods.

Housing Element Goal 2: Ensure availability of high quality, well-designed and environmentally sustainable new housing of all types throughout the City.

Housing Element Goal 3: Encourage the development of affordable and market-rate housing in order to meet the City’s assigned share of the regional housing need.

Housing Element Action 3.03-E: Encourage a mix of affordable and market-rate housing near transit.

Health and Safety Goal 8: An acceptable noise level throughout the community.

Analysis: The site’s location bounded by a major thoroughfare and a residential collector street on two sides and two-story single-family residential developments to the south and west makes it appropriate for a new two-story townhouse-style development. The project will have its own direct access off Guardino Drive, so vehicular traffic coming and going from the development will not have to pass through the adjacent residential neighborhood to get to the nearest arterial road (in this case, Mowry Avenue). The project is located directly adjacent to an Alameda County Transit bus stop on Mowry serving two local bus routes. The site is also approximately ½ mile from the Fremont BART station, so it is well-served by both local and regional transit service.

The proposed height and mass of the buildings are similar in scale to the existing single-family homes directly to the south and across Guardino to the west, as well as the garden apartment complex located across Mowry to the north, so the project will not adversely alter the existing character of the neighborhood.

Affordable Housing Ordinance: The affordable housing requirement for a 16-unit development is 2.4 units which equates to the provision of two on-site moderate income units and payment of in-lieu fees for the remaining 0.4 fractional unit.

Proposed Affordable Housing Plan: In order to comply with the Affordable Housing Ordinance, the applicant is proposing to pay in-lieu fees. Based upon the proposed average unit size of 1,607 square feet and a payment of \$18.00 per square foot (the in-lieu fee that will be in effect between 7/1/2011 and 6/30/2012 when the applicant will most likely obtain building permits for the project), payment of in-lieu fees would amount to approximately \$462,816.00

Green Building Practices: As a new residential project, the proposal is required by City ordinance to either achieve a minimum of 50 points on the Build-It-Green checklist or be built in compliance with the Tier 1 standards of the California Green Building Code. Staff will ensure the project's compliance with this requirement during the building permit review process.

Evaluation of Noise Impacts: A noise study was conducted to analyze noise impacts from the two adjacent roadways on the proposed development. The study determined that existing noise levels on the site currently exceed the thresholds prescribed by the Health and Safety Chapter of the General Plan for new residential development. The study recommended mitigation which staff has incorporated into conditions of approval for the project which will bring it into compliance with the noise level standards of the General Plan. This mitigation includes the use of stucco walls in lieu of wood fencing to enclose the rear yards of the four end units abutting Mowry Avenue and Guardino Drive, and the provision of air conditioning systems and sound-rated doors and windows for all 16 units. (See Condition #33, Mitigation Measures #3 and #4 in Exhibit "F" for specific requirements.

Zoning Ordinance Compliance: The subject property is currently zoned Multi-Family Residence, R-3-18. The applicant is proposing to rezone the parcel to a Planned District (P-2011-154) having eight duets containing a total of 16 units.

The precise plan for the project has been designed in a manner most closely resembling the R-3-18 Multi-Family Residence zoning designation. The following table shows how the proposal conforms to the development standards applicable to a new residential development project in the R-3-18 zone:

<i>Standard</i>	<i>Requirement</i>	<i>Proposed</i>	<i>Complies?</i>
Front Setback	20 feet ¹	Min. 11 feet	Acceptable (see footnote ¹)
Rear Setback	10 feet	Min. 12 feet	Complies
Interior Side Setback	10 feet	Min. 10 feet	Complies
Street Side Setback	20 feet ¹	Min. 7 feet	Acceptable (see footnote ¹)
Building Height	52 feet	Max. 27½ feet	Complies
Maximum Lot Coverage	50%	39%	Complies
Common Open Space	1,050 sq. ft./	0 sq. ft.	Does not Comply
Private Open Space	100 sq. ft.	Min. 290 sq. ft.	Complies

¹ FMC Section 8-2754(d)(1) allows the front and street side setbacks to be reduced below their respective limits in order to foster a pedestrian-friendly environment or neighborhood-scaled setting.

As this table shows, the project conforms to all applicable R-3-18 zoning standards except for the front and street side setback requirements and the common open space requirement. The minimum proposed front setback adjacent to Mowry Avenue is only 11 feet, or nine feet less than the standard, while the minimum proposed street side yard adjacent to Guardino Drive is only seven feet, or 13 feet less than the standard.

FMC Section 8-2754(d)(1), which governs development in the R-3 Multi-Family Residential District, allows for reductions in these two setback requirements when the project is attempting to foster a pedestrian-scaled environment. Staff supports the proposed setback reductions on the grounds that allowing them will give the project a more pedestrian-friendly feel by bringing the units and their front entries closer to the sidewalks while relegating parking facilities to the interior of the site (hence the determination that the proposal is “Acceptable” in the above table – ultimately it is the purview of the decision-making body to decide whether or not the design is acceptable). In staff’s opinion, the proposed reductions would both contribute to an attractive residential environment along the two streets and increase safety in the neighborhood by bringing the active living space of the end units closer to the public realm, thereby giving the project a strong street presence.

The requested exception to allow large private rear yards in lieu of a common usable outdoor space is warranted in that the yards being provided are, on average, more than three times the standard required for new duet units. As such, they provide significantly more useable private open space for homeowners than would a single, common open space. In the case of Lots 1 through 4, the yards provide even greater setbacks from the adjacent single-family homes next-door than would normally be required, thus increasing privacy for both the occupants of the existing homes as well as the new units.

Parking: Pursuant to Section 8-22003 of the FMC [Required Parking Spaces by Type of Use], the minimum parking requirements for new multi-family residential developments are as follows:

<i>Land Use</i>	<i>Parking Ratio/Standard</i>	<i>Spaces Required</i>	<i>Spaces Provided</i>	<i>Degree of Compliance</i>
Multi-Family Dwellings w/ Two or More Bedrooms	1.5 spaces for residents per unit; 0.5 spaces for guests per unit	24 for residents; 8 for guests	32 for residents; 5 for guests	Exceeds for residents; substandard for guests

As the table above shows, the project will exceed the minimum parking requirement for resident parking by eight spaces by providing each unit with a two-car garage. However, the project provides only five on-site spaces for guests when the zoning standards require eight spaces. As part of the project, the applicant will re-stripe the lane markings on Guardino Drive adjacent to the project site to accommodate three additional on-street parking spaces where none currently exist, thus providing three additional spaces immediately adjacent to the proposed development. In addition, on-street parking is available along both sides of Guardino within easy walking distance from the project site.

FMC Section 8-21811(d) allows the decision-making body to grant exceptions to the parking requirements in a Planned District if doing so creates a more desirable living environment. In this case, there is very little available land within the development for the applicant to accommodate more guest parking while still meeting the minimum density prescribed by the General Plan. By only providing five

guest spaces, the design of the subdivision is able to accommodate a centrally-located bioretention area in which a large (48-inch box) Yarwood Sycamore tree will be planted to serve as an attractive focal point for the project. For this reason, and because the applicant will also restripe the portion of Guardino Drive adjacent to the site to accommodate three additional on-street parking spaces, staff supports the proposed reduction in on-site guest parking

Design Analysis:

Site Planning: The proposed subdivision design incorporates a single “T”-shaped, double-loaded private vehicle accessway, a form of private street, located off Guardino Drive, with 16 duet units constructed in parallel rows on either side of the street. The two end units facing Guardino will take access from the public sidewalk, while the other 14 units will have walkways leading directly from the private street to their front porches. Guest parking and a landscaped bioretention area will be located in the center of the development. Each unit will be provided with a fenced off private backyard, the smallest of which will measure 290 square feet (10’ x 29’).

To prevent unwanted cut-through foot traffic through the development, the project will have a locked gate at the access point from the Mowry Avenue sidewalk that will be for resident access only. Public access to the site will be provided via concrete walkways leading from the Guardino sidewalk into the development along both edges of the private street. A stucco wall ranging in height from 4-8 feet will be erected along the two street frontages to provide privacy and buffer the rear yards of the units from roadway noise. The wall will measure four feet at the gated entrance along Mowry and be topped with a 2-foot decorative metal railing and a 9-foot high wooden trellis to embellish the entry point.

Architecture: The project is a townhome-style development consisting of eight separate buildings containing two units each. The architectural style of the project is Spanish Colonial Revival, with elements such as gabled roofs with clay pipe attic vents, arched recessed window and door openings, and the use of wood and metal exterior detailing, including faux wood shutters and metal grillwork and awnings. Exterior building materials include a coarse stucco finish, concrete tile roofing, and rigid foam molding for trim.

Open Space/Landscaping: All of the lots will be provided a minimum of 290 square feet of private outdoor backyard space which will come equipped with landscaping and a concrete patio for outdoor living uses. The rear yards of the four lots that back up to the existing single-family homes immediately south of the project site (Lots 1-4) will also be provided with trees for privacy and screening. Landscaping will line the walkways leading to front door of each unit, and numerous trees, shrubs and ground cover will be planted along both street frontages between the sidewalks and the stucco walls enclosing the rear yards. A large bioretention area will be constructed in the center of the development, in which a 48-inch box large canopy tree will be planted as a focal point for the project.

Tree Removal/Replacement: An arborist’s report prepared for the project site by HortScience, Inc. in July 2007 evaluated a total of 11 trees. Three of the trees are located off-site in the Mowry Avenue public right-of-way and were determined to be in good to moderate condition. Of the other eight trees evaluated, three have since been removed illegally by the current property owner without permits, and only five currently remain. All five remaining trees were determined to be in moderate or poor condition, and all are proposed for removal. The three trees removed illegally were also determined to

be in poor condition by the arborist's report. For this reason, staff does not propose imposing penalties for their removal. Instead, staff has included a condition of approval requiring the applicant to plant one large 48-inch box specimen tree and seven 36-inch box replacement trees within the development instead of the standard replacement requirement of one 24-inch box tree for each tree being removed. The applicant has agreed to comply with this condition, so no further action is needed to mitigate the removal of the three trees.

Site Circulation: Vehicular access to the development will be provided via a single driveway off Guardino Drive leading to a "T"-shaped private street in order to minimize curb cuts and maintain the existing streetscape along the much busier Mowry Avenue. The garages and front entrances of all the units except the two facing Guardino (Lots 1 and 16) will open inward onto the private street, while the front entrances of Lots 1 and 16 will be oriented outward towards the Guardino sidewalk. Pedestrian access to the entrances of each unit will be provided via paved walkways running along both edges of the entire length of the private street. Although these walkways are not physically separated from the vehicular travel lanes with curbs, they will be paved with Portland cement concrete to distinguish them from the asphaltic concrete that will be used to pave the center of the street, and scored at regular intervals much like a typical sidewalk. Therefore, while they will actually be located within the travel lanes and frequently driven over, these walkways will resemble sidewalks in their physical appearance in an effort to provide clearly-defined pedestrian access from Guardino Drive into the development.

Street Right-of-way Dedication and Improvements: The project has approximately 108 feet of frontage along Mowry Avenue and 180 feet of frontage along Guardino Drive. Vehicular access to the project is provided by a new 24-foot wide driveway on Guardino Drive. The developer is required to dedicate right-of-way and install street improvements in accordance with the Subdivision Ordinance and the Street Rights-of-way and Improvement Ordinance. The following outlines the street right-of-way dedication and improvement requirements for the project:

- Mowry Avenue is designated in the General Plan as a major arterial with a right-of-way width of 104 feet. Currently, the existing right-of-way along the project frontage is 104 feet. Therefore, no right-of-way dedication is needed. Required street improvements include, but are not limited to: street trees, irrigation as required, and replacement of any damaged sidewalk, curb, or gutter.
- Guardino Drive is designated in the General Plan as a major collector street with a right-of-way width of 84 feet. Currently, the existing right-of-way along the project frontage is 84 feet and no right-of-way dedication is needed. Required street improvements include, but are not limited to, a new driveway cut, street trees, irrigation, utility connections, asphalt overlay, relocation of existing utilities, and replacement of any damaged sidewalk, curb, or gutter.
- Street "A" is a private vehicle accessway (PVAW) that provides vehicle access to all residential units within the project. A PVAW is a type of private street commonly used in townhouse and condominium developments. The proposed private street pavement width is 24 feet. Additionally, a minimum 4-foot setback is provided for the garage access for each unit, a standard requirement of PVAWs. The developer shall establish a private street right-of-way and install complete street improvements for the PVAW within the project. Improvements shall

include, but are not limited to: installation of pavement (including enhanced paving for pedestrian walkways within the PVAW), curb, gutter, street lights, and utilities. The Homeowner's Association shall own and maintain the common facilities within the PVAW.

Analysis: The development policy for PVAWs requires a 3 ½-foot wide sidewalk on both sides of the vehicle accessway. However, for reasons elaborated in the "Findings for Approval for Private Streets" section below, 2 ½-foot wide paved walkways along the sides of the PVAW are being provided in this case. This will provide clearly delineated areas for pedestrians to use as walkways to access the Guardino Drive and Mowry Avenue sidewalks.

Grading & Drainage: The subject site is currently undeveloped. The existing topography of the site is relatively level with elevations ranging between 68 feet in the northeast area of the project site to 66 feet in the southwest area of the project site. The grading work for the site will primarily involve grading needed to bring the curb grades and building pads to the required elevations. The estimated earthwork quantity for the total project is 980 cubic yards of cut and 140 cubic yards of fill, resulting in approximately 1,120 cubic yards of dirt being moved.

The runoff from roof areas and the private street will be treated in landscape-based treatment measures. Connection to the existing storm drain facility will be through an existing curb inlet on Guardino Drive. The details of the proposed on-site storm drainage system and connection to public main will be included with the improvement plans for the project. The drainage system shall be subject to approval of the City Engineer and the Alameda County Flood Control and Water Conservation District.

Water Service and Water System: The applicant proposes to connect to an existing 8-inch water main in Guardino Drive to serve all of the units, including connections required for common and private irrigation services. Water meters for each unit, including meters for irrigation, will be located behind the curb adjacent to the driveway of each unit.

Urban Runoff Clean Water Program: The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in stormwater runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design.

The applicant intends to meet the quantitative stormwater treatment requirements by installing bioretention planters, rain gardens, and Filterra units within the development. The stormwater treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to final map approval.

As required by the Alameda Countywide NPDES Municipal Stormwater Permit, the property owners (or, collectively, their HOA) shall enter into a maintenance agreement for the long-term operation and maintenance of stormwater treatment measures. The agreement will require the ongoing maintenance of all the designated treatment facilities. The property owners shall also integrate a sidewalk and pavement sweeping program to help prevent debris and other pollutants from entering storm drains.

Geologic Hazards: According to the official Seismic Hazard Zone maps released by the State Geologist, the project site is located within an area of potential Earthquake Induced Liquefaction. In accordance with State law, the project geotechnical engineer prepared a seismic hazard report which was peer-reviewed and approved by the City's geotechnical consultant and filed with the State Geologist. The project improvements and building construction will conform to the recommendations of the seismic hazard report and peer review.

FINDINGS FOR APPROVAL:

Planned District: Pursuant to Section 8-21813 of the Municipal Code, the City Council may adopt an ordinance establishing a new Planned District (or P district) if the following findings can be made:

- (a) The proposed P district, or a given unit thereof, can be substantially completed within four years of the establishment of the P district;
- (b) Each individual unit of development, as well as the total development, can exist as an independent unit capable of creating an environment of sustained desirability and stability or that adequate assurance will be provided that such objective will be attained; the uses proposed will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved under other zoning districts;
- (c) The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and increased densities will not generate traffic in such amounts as to overload the street network outside the P district;
- (d) Any exceptions from standard ordinance requirements are warranted by the design and amenities incorporated into the precise site plan, in accord with adopted policy of the planning commission and city council;
- (e) The area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development;
- (f) The P district is in conformance with the General Plan of the City of Fremont; and
- (g) Existing or proposed utility services are adequate for the population densities proposed.

Discussion:

- (a) It has been the City's experience that the design and type of the subdivision and housing product being proposed can easily be completed within four years. There is nothing unusual about the site and no significant environmental constraints are known to exist which could cause significant delays during construction of the project.
- (b) The entire project consists of 16 residential units all sharing a single private street for vehicular access. As such, the development will be able to function as an individual, fully independent unit. The units will be part of a Homeowner's Association which will be responsible for maintaining the architecture, landscaping, and other on-site improvements in a fully functional and aesthetically

pleasing manner. In addition, the project has been designed to minimize impacts on adjacent development through the provision of landscaped setbacks with trees for privacy and screening, and to provide an attractive street presence through the orientation of the exterior units toward Guardino Drive and a decorative gated trellis leading out to the Mowry Avenue sidewalk.

- (c) The project is estimated to generate an average of 8 additional vehicle trips during the PM peak traffic hour and 93 total daily trips. Mowry Avenue currently has a PM peak hour volume of 2,261 trips and an average daily volume of nearly 25,000 vehicle trips. As such, the project would increase the PM peak volume by 0.35% and the daily volume by 0.37%, or less than 1% during either timeframe. These increases would have a negligible impact on the traffic levels of the street network in the area.
- (d) The exceptions being requested in this case are warranted by the design and amenities of the subdivision in that the reductions in front and street side yard setbacks create a more pedestrian-oriented design by bringing the end units closer to, and orienting them towards the sidewalks within the public realm, while relegating the garages to the interior of the site behind the front entries. The requested exception to allow large private rear yards in lieu of a common usable outdoor space is warranted in that the yards being provided are, on average, more than three times the standard required for new duet developments. As such, these backyards provide significantly more useable private open space for homeowners than would a single, common open space. In the case of Lots 1 through 4, the rear yards provide even greater setbacks from the adjacent single-family homes next-door than would normally be required, thus increasing privacy for both the occupants of the existing homes and the new units. And finally, the requested exception to allow only five on-site guest parking spaces when eight are required is warranted in that by only providing five spaces, the project is able to accommodate a centrally-located bioretention area in which a large Yarwood Sycamore tree will be planted to serve as an attractive focal point for the project. In addition, the applicant will stripe additional on-street parking along Guardino Drive immediately adjacent to the site where none currently exists.
- (e) The adjacent lands to the north, south and west all are zoned for small-lot single-family or multi-family apartment development, and therefore can be (or already are) developed with similar-sized buildings having similar setbacks. The proposed development has been designed to be fully independent through the provision of its own private street, so it will not conflict with adjacent improvements or land uses, or alter or otherwise impact existing circulation routes.
- (f) The Planned District will conform to the General Plan in that the proposed density of 16.2 units to the acre is consistent with the General Plan land use designation of Medium Density Residential 15-18 dwelling units per acre, and components of the project comply with various goals and policies of the Land Use, Housing, and Health and Safety Chapters of the General Plan as discussed in the "General Plan Conformance" section, above.
- (g) There are existing water, sewer, and public storm drain systems serving the area located within Guardino Drive which are capable of accommodating the proposed development, and no additional off-site easements need be secured or extensions constructed in order to tie the project into these systems.

Vesting Tentative Tract Map: In order to approve the proposed Vesting Tentative Tract Map, the subdivision must be found to be consistent with the General Plan, FMC Section 8-1418, and the Subdivision Map Act. Based on the analysis provided above, staff finds that the proposed vesting tentative map is in conformance with the General Plan, FMC Section 8-1418, and the Subdivision Map Act. However, if any of the following findings can be made, the vesting tentative tract map shall be denied. Staff was unable to make any of the findings to deny the map, and therefore recommends approval of the application.

- (1) The map fails to meet or perform one or more of the requirements or conditions imposed by the Subdivision Map Act and Chapter 1 of the Zoning Code (Subdivisions);
- (2) The proposed subdivision, together with the provisions for its design and improvements, is not consistent with applicable general and specific plans;
- (3) The site is not physically suitable for the type or proposed density of development;
- (4) The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
- (5) The design of the subdivision or the type or improvements is likely to cause serious public health problems; and
- (6) The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

Preliminary Grading Plan: Pursuant to FMC Section 8-4109, the following findings must be made in order to approve a preliminary grading plan application:

- (a) The proposed project will not have an appearance, due to the grading, excavation or fill, substantially and negatively different from the existing natural appearance;
- (b) The proposed project will not result in geologic or topographic instability on or near the site;
- (c) The proposed project will not endanger public sewers, storm drains, watercourses, streets, street improvements or other property; will not interfere with existing drainage courses; and will not result in debris being deposited in any public right-of-way;
- (d) Conformity, where applicable, to special concerns relating to the adopted seismic safety element and concerns shown on maps issued by the U.S. Geological Survey and the California Division of Mines and Geology; supplemental data and substantiation of conclusions may be required by the City Engineer upon city review of the reports; and
- (e) The proposed project will not unacceptably affect the health, safety or welfare of adjacent residents or landowners, nor the citizens of Fremont.

Discussion:

- (a) The subject property is relatively flat and has a gradual downward slope running east to west resulting from a 2-foot change in elevation. The preliminary grading plan is designed to create drainage patterns which channel runoff from the project into stormwater treatment devices located within the private street and, eventually, downstream into the public storm drain system in Guardino Drive. The engineered grades will respect the existing topography, and no retaining walls are needed to achieve level building pads and positive drainage for the project. As such, the proposed plan would not significantly alter the appearance of the land from the adjacent properties or within the site itself.
- (b) All graded areas would be engineered with fill material that will be compacted in accordance with the specifications of the Grading, Erosion and Sedimentation Chapter of the Fremont Municipal Code to provide a safe, stable environment for the proposed end use of the land for new residential development. As such, implementation of the project will not cause geologic instability which could result in a safety hazard to the occupants or neighboring properties.
- (c) All utility services would require extensions from existing off-site mains into the subdivision; there are currently no streets or sewer, water, or storm drain lines within the area of land to be developed. Similarly, no bodies of water traverse the site. As such, there are no existing utilities or water bodies that could be damaged as a result of the project.

A new driveway leading into the proposed private street will be constructed along Guardino Drive, and any damage done to the existing public right-of-way improvements would be repaired and/or replaced to the satisfaction of the City Engineer. In addition, the project would be designed so as not to augment runoff onto any adjacent properties, and the applicant would be required to implement erosion control measures during grading and construction activities to prevent sediments and/or debris from entering the public storm drain systems.

- (d) According to the 2004 California State Geologic and Seismic Hazard Zones map, the project site is located in an area susceptible to earthquake-induced liquefaction. Furthermore, according to a geotechnical report prepared for the project in December 2010, the property contains porous soils near the land's surface which have the potential to expand. As such, all grading, foundations and structures must be engineered and designed in conformance with applicable geotechnical and soil stability standards of the California Building Code to ensure the safety of the project's occupants and the adjacent properties.
- (e) Minor construction-related impacts to the existing medical office complex and single-family neighborhood immediately to the east and south, respectively, will occur, including noise, vibration, and exhaust fumes from earth-moving and construction equipment. However, these impacts would be of a short duration, and the final topography that would be established upon completion of the grading work will be geologically stable and suitable for residential development. The project would also be designed to capture all runoff from the site and channel it to the storm drain system, and to prevent erosion and sediments from entering the street and storm drain system.

Private Street: In accordance with FMC Section 8-1502, all lots created by a subdivision must have access to a public street. The same code section allows for private streets to be used to provide access in certain cases where it is determined that such a street would be more appropriate than a public street. In such cases, the decision-making body must make the following finding in order to approve a private street over a public street

(1) The most logical development of the land being subdivided requires private street access.

Discussion:

A public street would normally be required to provide access to the project. However, in this case, allowing the PVAW is the most logical approach in that the land being subdivided is currently designated for medium-density residential development in the Zoning Ordinance and General Plan due to its proximity to central Fremont and the Fremont BART station. The City's standard street section for a public residential cul-de-sac requires two travel lanes, and on-street parking, curbs, gutters, and sidewalks with landscape planters on both sides of the street. If the applicant were required to construct a full public street section to this standard, the amount of developable land remaining on the property would not be able to accommodate the type of development being proposed. Instead, the applicant would likely have to build airspace condominium units of 3 or more stories in height to achieve the minimum density prescribed by the General Plan. Such a design would be less compatible with the adjacent single-family development to the south and west, and would adversely impact the privacy and views of the homeowners residing next-door and directly across Guardino Drive.

For this same reason, staff has agreed to accept walkways within the PVAW which will be finished with Portland cement concrete to delineate them from the asphaltic concrete that will be used to pave the center of the PVAW in lieu of sidewalks. By providing these walkways in lieu of sidewalks, the applicant is able to provide each unit with more usable private backyard space, and in the case of Lots 1 through 4, greater separation from the existing homes backing up to those lots.

In sum, staff supports the proposed PVAW design on the grounds that it is sufficient for traffic safety and emergency vehicle access purposes, and, at the same time, it allows the applicant to construct a product type that is architecturally compatible with the existing character of the adjacent residential neighborhood, and provide larger rear yards for each unit and greater separation from the adjacent single-family homes.

Planning Commission Action: On June 23, 2011, the Planning Commission considered the proposal and unanimously recommended Council approval (6-0 w/ one absent) in accordance with staff's recommendation. Staff has received no opposition to the project throughout the application review process, and there were no comments from the public at the Planning Commission hearing.

Impact Fees: This project will be subject to citywide Development Impact Fees, including fees for fire protection, park facilities, park land, capital facilities and traffic facilities. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance. The applicant may elect to defer payment of the fees in accordance with the City's Impact Fee Deferral Program.

FISCAL IMPACT: Not applicable.

ENVIRONMENTAL REVIEW: An Initial Study and Draft Mitigated Negative Declaration (see Informational Item #1 and Exhibit “A”) have been prepared for this project in accordance with the requirements of the California Environmental Quality Act. The environmental analysis identified concerns regarding potential significant impacts to air quality and biological resources, as well as noise impacts from vehicular traffic to the dwelling units. The Draft Mitigated Negative Declaration includes mitigation measures which will reduce the identified impacts to non-significant levels.

These measures include the implementation of dust control methods during grading and construction activities, pre-construction surveys for burrowing owl habitat not more than 30 days prior to commencement of ground-disturbing activities, and the use of sound-rated construction materials for walls, and window and door openings that are exposed to high noise levels from vehicular traffic along Mowry Avenue and Guardino Drive. The mitigation measures are included as conditions of approval for the project.

ENCLOSURES:

- [Draft Ordinance](#)
- [Exhibit “A” – Draft Mitigated Negative Declaration and Mitigation Monitoring Program](#)
- [Exhibit “B” – Rezoning Map](#)
- [Exhibit “C” – Site, Architectural and Landscape Plans for Precise Planned District P-2011-154](#)
- [Exhibit “D” – Vesting Tentative Tract Map 8076, Private Street & Preliminary Grading Plan](#)
- [Exhibit “E” – Affordable Housing Plan](#)
- [Exhibit “F” – Recommended Findings and Conditions of Approval](#)
- [Informational #1 – Initial Study](#)
- [Informational #2 – Project Summary Data](#)
- [Informational #3 – Draft Minutes from June 23, 2011 Planning Commission hearing](#)

RECOMMENDATION:

1. Hold public hearing;
2. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Program, and find this action reflects the independent judgment of the City of Fremont;
3. Find the project consistent with the General Plan for the reasons enumerated in this staff report;
4. Find that the Precise Plan for the project as depicted in Exhibit “C” (architectural and landscape plans) and Exhibit “D” (Vesting Tentative Tract Map 8076, Private Street, Preliminary Grading Plan and accompanying civil plans) fulfills the applicable requirements set forth in the Fremont Municipal Code;
5. Introduce an ordinance rezoning the property from Multi-Family Residence (R-3-18) to Planned District (P-2011-154) as shown on Exhibit “B” and establishing the Precise Plan for the Planned District as shown in Exhibit “C” (architectural and landscape plans), based upon the findings and subject to the conditions of approval set forth in Exhibit “F”;
6. Approve Vesting Tentative Tract Map 8076 and the accompanying Private Street and Preliminary Grading Plan as shown in Exhibit “D”, based upon the findings and subject to the conditions of approval set forth in Exhibit “F”;

7. Approve the Affordable Housing Plan authorizing the applicant to pay in-lieu fees to fulfill its obligation under the Affordable Housing Ordinance as proposed in Exhibit “E”; and
8. Approve the proposed removal and mitigation for eight private, protected trees, pursuant to the Tree Preservation Ordinance and as described in the staff report and conditions of approval contained in Exhibit “F”; and
9. Direct staff to prepare and the clerk to publish a summary of the ordinance.

5.1 CENTER THEATER CONDITIONAL USE PERMIT AMENDMENT APPEAL – 37411 FREMONT BOULEVARD – PLN2011-00093

Public Hearing (Published Notice) to Consider an Appeal of a Planning Commission Denial of a Conditional Use Permit Amendment to Expand the Allowable Uses to Include a Concert Hall, Banquet Facility, Dinner Theater, and Other Assembly Uses and Events Where a Performing Arts Theater and Movie Theater are Currently Permitted in the Centerville Planning Area.

Contact Person:

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Dept.:	Community Development	Community Development
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Executive Summary:

The applicant proposes to expand the list of uses and acquire needed off-site parking for the Center Theater, including theater and hall operations beginning in the evening and miscellaneous smaller-scale uses during the day. The changes are discussed in relation to parking and public safety, which are key concerns for this and other venues in the core of Centerville. On June 9, 2011, the Planning Commission heard the subject proposal, and voted 3-3 on a motion to approve this project. Because a majority did not vote in support of the amendment, the application is deemed denied. On June 13, 2011, the applicant appealed the item to City Council with additional requests for modifications to hours of operation and police department notification requirements. Staff recommends that City Council uphold the appeal and grant approval to the proposed project without the modifications requested by the applicant based upon findings and subject to conditions.

BACKGROUND:

The Center Theater was built by the Salih brothers in 1946 prior to City incorporation. The building designer, Alexander A Cantin, was a prominent San Francisco architect who designed a number of theaters in the Bay Area. The theater originally showed first-run motion picture films. Live concerts were also showcased in the theater. As the years passed, the Center Theater strove to maintain its identity and vitality in the face of competition from outlying modern shopping areas and drive-in theaters. In 1973, the theater was closed after the death of the last of the Salih brothers.

From 1977 until the mid-1980s, the theater operated as a Spanish-language venue called the Cine Azteca. Shortly thereafter, the Center Theater was known as the ABC Center, which operated as a discount theater until 1992. In November of 1992, the Naz opened, providing first run Indian movies. In 2000, the Naz was closed after the opening of the Naz 8 in the Fremont Hub Shopping Center.

Live performance theater and movie theater uses were permitted uses in the Community Commercial (C-C) district until the year 2000, when a Zoning Text Amendment required motion picture and performing arts theaters to obtain a Conditional Use Permit. In 2003, the applicant applied for Conditional Use Permit PLN2003-00085 – resume operation of a movie theater at the property. As stated in Condition of Approval No. 4, the permit “...allow[ed] the operation of a movie theater and

performance arts theater. This CUP permits no other use. Any expansion of use or alternative uses shall require an amendment to the CUP, and shall be reviewed by the Planning Commission. Adult motion picture theater is not permitted.”

As part of Conditional Use Permit PLN2003-00085, the operator was required to secure 57 off-site parking spaces to achieve the minimum parking for up to 400 patrons, and to submit any potential agreements to the City for review and approval. The City does not have record of such an agreement being approved, meaning the business would only be able to serve up to 172 people for the movie and performing arts theater uses based upon on-site parking and a waiver of 25 spaces granted specifically for these two uses.

The Center Theater was used as an Indian movie theater until October 2010. In late 2010, the City became aware that a concert was being proposed by a new tenant at the Center Theater. The City sent a letter to the building lessee on November 4, 2010, specifying conditions of PLN2003-00085, and notifying the lessee that holding the event would be in violation of the permit, subjecting the operator to a fine. The applicant applied for the current Conditional Use Permit Amendment on November 22, 2010, but went forward with the event on November 27, 2010, and was fined by the City for holding the event outside of the terms of the approved Conditional Use Permit. Subsequently, the lease with that operator has ended, and the owner is proceeding with a use permit for the project identified herein. The building is currently not in use.

DISCUSSION/ANALYSIS:

Project Description

The applicant proposes to expand the allowable uses in the Center Theater from the existing approved performing arts theater and movie theater to include:

- Concert hall (Musical performance open to the public, no food or beverage in hall);
- Banquet facility (Private events including food and beverage and entertainment);
- Dinner theater (Performances open to the public, include food and beverage service);
- Restaurant of 1,500 square feet;
- Other assembly uses and events (e.g. Community meetings, educational services, broadcasting);
- Performing arts and movie theater uses.

Each of the specific aforementioned uses is conditionally permitted in the Community Commercial Zoning District. The maximum capacity for the large format uses is 299 patrons.

The applicant proposes the combination of existing on-site parking spaces, a 25 on-site parking space waiver, and an off-site parking agreement for 52 parking spaces in order to provide sufficient parking for the maximum large format venue capacity of 299 people. The waiver is discussed in more detail at the end of the Zoning Regulations section.

Project Analysis

General Plan Conformance

The existing General Plan land use designation for the project site is Community Commercial. The proposed project is consistent with the existing General Plan land use designation for the project site because venues where people can meet for various entertainment and other purposes are consistent with the range of uses permitted in the City's historic town centers. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

- Policy LU-2.11: The Community Commercial Designation offers a list of allowed uses that includes: offices, services, retail, wholesale, eating and drinking establishments, mixed uses, and hotels/motels.
- Analysis: The proposed uses include food service in conjunction with a venue offering various types of entertainment and assembly uses, which are service uses appropriate for community commercial areas.
- Policy LU-2.18 Where appropriate, buildings shall be oriented toward the street and sidewalk. Whenever feasible, parking should be at the rear of buildings or in joint parking areas rather than in front of buildings and businesses.
- Analysis: The historic Center Theater was built in Centerville's original main street pattern. The applicant proposes to maintain that format by providing parking in an existing lot behind the building, through an off-site agreement, and through a parking waiver.
- Policy LU 2.20: Implement the adopted land use policies of the Centerville Specific Plan
- Analysis: The proposed continuation and addition of community entertainment and other venues within this existing facility provides additional community venues in Centerville. Centerville Specific Plan land use policy LU-1 encourages revitalization of the historic core through reuse and preservation of historic facilities such as that proposed through this project.
- Objective LE 3.2: Thriving Community Commercial centers whose function is to provide a wide range of goods in a focused, identifiable, pedestrian-oriented commercial area.
- Policy LE 3.2.1: Actively promote the revitalization of existing Community Commercial centers, drawing on the unique and historic features of each community.
- Analysis: Policy LE 3.2.1 supports Objective 3.2 by calling for revitalization of the Centerville core's historic features, including the Center Theater, in order to expand the range of pedestrian-oriented commercial offerings. This project expands allowable uses within an existing historic building, and will support pedestrian activity and area vitality.

Policy T 1.2.8 Provide adequate and convenient off-street parking to reduce the impediment of on-street parking to the efficient flow of traffic.

Analysis: The parking section below demonstrates compliance with parking requirements through on-site spaces, off-site spaces, and a parking waiver recommended for reauthorization.

Redevelopment Plan Conformance

This project is located within the Centerville Redevelopment Area. The Centerville Redevelopment Plan calls for the following selected goals and objectives applicable to this project:

21. The attraction of appropriate new businesses and the retention and expansion of existing businesses in coordination with Citywide economic development programs.
22. The preservation and creation of civic, cultural and educational facilities and amenities as a catalyst for area revitalization.

Analysis: This proposed Conditional Use Permit Amendment expands the list of allowable uses within an existing historic building to enhance its contribution as a catalyst in the historic business core. Venues such as those proposed, if properly controlled to prevent parking, noise, and other potential nuisances, can help revitalize the area by adding patrons who may circulate and support local businesses within the commercial core.

Zoning Regulations

As set forth in Section 8-21103(c), (e), (g), (k), and (x) of the Fremont Municipal Code (FMC), Banquet Halls, Concert Halls, Dinner Theaters, Motion Picture Theaters, and Performing Arts Theaters may be allowed in a Community Commercial (C-C) District subject to a Conditional Use Permit and in conformance with the applicable provisions included in Article 21.3. The above uses would be operated during hours up until 12:30 a.m., depending upon alcohol service. The intent of the FMC is to allow for the individual operation of each type of facility without a blending of all activities within one business at one time.

The applicant is requesting the ability to hold other miscellaneous assembly uses and events in the facility. During weekday hours (9 a.m. until 6 p.m.), the applicant proposes to hold small-scale meetings, classes, and television broadcasting studio operations. Radio and television broadcasting studios are a permitted use per FMC 8-21101(b)(30). Trade, vocational, and business classes would be classified as Schools and Educational Services, which are Zoning Administrator Permitted uses per FMC 8-21103.1(s). The holding of general meetings would be classified as exhibitions or conferences (a meeting hall, such as for public speaking events or business meetings), which are conditionally permitted uses per FMC 8-21103(u), albeit at a lesser scale as proposed than those intended by that use category.

The Fremont Municipal Code places no additional special restrictions upon those theater or hall uses listed above, which are allowed by Conditional Use Permit, but charges the Planning Commission with review of them for appropriateness in any particular location. Primary considerations analyzed herein

include the aforementioned conformance with Zoning and General Plan requirements, appropriateness in the proposed location, provision of adequate parking, and protection of public safety, each of which are analyzed herein.

Parking

The project site has 31 parking spaces at the rear of the site on a separate parcel in common ownership and common use. Five apartment units on the rear site require (8) parking spaces and 1,500 square feet of restaurants within the theater building require an additional 15 parking spaces. The remainder is 8 of the 31 parking spaces available for uses within the theater itself. The prior Conditional Use Permit did not consider the square footage of restaurants included in the building in order to calculate existing and required parking for the use. In order to permit the theater, banquet, and concert uses in conjunction with the restaurants, continuing the parking waiver of 25 spaces is necessary for the large format evening uses. Based upon the type of facility, the applicant has stated that the maximum number of occupants will not exceed 299 people for the most intense uses in order to avoid triggering the requirement to install a fire alarm system. Allowable uses have been determined based upon the maximum feasible building occupancy within required parking ratios. The table below shows required parking spaces by type of use:

<i>Function</i>	<i>Parking Ratio/Standard</i>	<i>Units/Square Feet (SF)</i>	<i>Required Spaces</i>
Apartments	1.5 per unit	5	7.5 (8)
Restaurant (Bismillah & De Afghanan) [8-22003(b)(3)e.]	1 per 100 s.f.	1,500 s.f.	15
Movie Theater, Performing Arts Theater, Meetings, or Concert Hall [8-22003(b)(1)a.]	1 per 4 fixed seats	299 seats	75
Banquet Hall or Dinner Theater [8-22003(b)(3)e.)]	1 per 3.5 seats plus 10% for employees	140 seats	44
Theater or Hall with seating at tables as well as fixed seats	1 per 4 for fixed seating and 1 per 3.5 seats at tables plus 10% for employees	140 seats at tables plus 159 fixed seats	84
Trade, Vocational, or Business educational uses [8-22003(b)]	1 per 3 student classroom seats plus 1 per employee	(assuming no more than 3 employees) 15 seats	8
Dance school	5, plus 1 per 150 s.f. of dance floor over 500 s.f.	<950 s.f. area	8
Television Broadcasting	No code standard	(No more than 10 people per owner)	8 recommended

Based upon a maximum of 299 patrons, of which 140 people may be at tables and 159 people may be in theater-style seating in rows, a total of 84 parking spaces would be required for the most intense use

proposed. The most intense large format use in the evenings and weekends would require 84 spaces, 52 of which would be provided by the off-site parking, 8 are onsite, and 25 of which would be waived. The off-site spaces proposed would only be available in the evening due to the hours of the associated businesses.

Staff finds that, while the project does not completely meet the City's general parking standards, sufficient off-street and on-street parking is available and use of the following available tool is warranted for this project.

Parking Waiver (25 spaces)

Under the parking provisions of Section 8-22003.1(b)(1) of the Zoning Ordinance (Article 20), the Planning Commission may reduce the parking requirement for a particular project involving commercial uses in Subarea 1 of the Centerville Specific Plan. Although FMC 8-22002(a) would allow the forgiveness of the amount of parking that was not required at the point of construction and establishment of the Center Theater, the previous loss of the building's non-conforming status due to cessation of operations requires provision of parking per current requirements. However, the city recognizes that the standard parking requirements are not always appropriate for areas historically developed in a main street pattern, and can act as a constraint to redevelopment if applied strictly. In 2002, the Planning Commission approved Conditional Use Permit PLN2003-00085 with a parking space reduction of 25 parking spaces for the movie theater and performing arts theater uses. Based upon the similarities in parking ratios for the proposed additional large format venues, since the applicant has sought on-site and off-site parking to the maximum extent feasible, because there is sufficient on-street parking in the area (on-street parking is permitted on Fremont Boulevard, Peralta Avenue, and Maple Street), because such on and off-site parking will prevent the reduction from being detrimental to nearby property, because the parking allows maintenance of the existing main street setbacks, and because 25 spaces, or 41% of the 60 spaces provided for the peak demand use of the theater (23% of the required 108 parking spaces provided for full use of all concurrent uses onsite), staff recommends that the needed 25-space waiver be retained for the existing and added larger format uses (performing arts, movie, and dinner theaters; and banquet, concert, and meeting halls), but not for the smaller-scale dance or other educational uses and the broadcasting or taping of material for television.

In accordance with FMC 8-22003.1(d)(i-iv), certain formal findings related to the above analysis are required to be made in order to grant or extend a parking waiver within a historic main street commercial center. These finding are included within the findings section below.

Design Analysis

Site Planning and Architecture

No changes to the existing site plan or architecture are proposed. Any modifications to the building or grounds, including sign permits, will be subject to separate subsequent review. Record documents for Conditional Use Permit PLN2003-00085 in 2002 show 571 fixed seats in the theater. Between 2002 and the present, the theater was modified without a building permit to remove all 305 fixed seats in the orchestra (lower) level and the area was tiered. A condition is proposed to require that the applicant secure approval of a building permit to legalize the current interior condition. The City will follow through on this code enforcement issue independent of the authorization of the proposed amendment to the Conditional Use Permit.

Public Safety

One of the primary considerations for any assembly venue is the safety of patrons and the public surrounding an event of this proposed size. To this end, conditions of approval have been added to ensure compliance with the building and fire codes, adequate provision for controlling occupancy and providing information for public safety responders, and suitable parameters on security and operations.

Primary security requirements for banquet hall, dinner theater, and concert hall events include provision of security guards using a ratio of one guard per 75 patrons that the City has adopted for similar venues, a requirement that the operator notify the police department of upcoming events for public safety resource planning purposes, a restriction on use of outside promoters, and cameras/lighting for safety.

The applicant has indicated a desire to serve alcohol at the facility. Inclusion of alcohol at late-night events is of particular concern for gauging the frequency and complexity of police response. Similar to other recent venues in the area, staff recommends a condition allowing, for events with alcohol, that alcohol service last until 11:00 p.m., entertainment stop at 11:30 p.m., with all attendees leaving the property by 12:00 a.m., and non-alcoholic, but large, events to stop entertainment at 12:00 a.m., with all attendees to leave the property by 12:30 a.m., except for movie theater events, which must end by 1:00 a.m., with patrons to leave the property by 1:30 a.m. This allows any potential problems to resolve by 2:00 a.m., at which time existing bars in the area close, and calls for police service ordinarily increase.

Staff reviewed the applicant's proposal for alcohol service in conjunction with the layout of the facility and knowledge of liquor licensing categories and restrictions unique to movie theaters and halls, and recommends additional alcohol service restrictions intended to prevent alcohol service around minors, prevent operation of a bar or nightclub at the facility, and balance viability of the venue with public safety demands. To these ends, Staff recommends condition of approval 19 that specifies, for example, that alcohol service and consumption in the facility is only allowed in conjunction with food service at tables. Service of alcohol other than at tables in conjunction with catered food service (such as from the concession stand or to people not being served meals) could effectively create a very large bar or nightclub, based upon the definitions for a drinking place or nightclub being tied to an operation primarily selling alcohol rather than food.

Operational Requirements: Food Service

A snack bar has previously been operated within the lobby that may continue to be used for performances involving fixed seating. However, the applicant has not received approval for a full-service commercial kitchen onsite for use in catering sit-down events. Only off-site catering of events is permitted.

Circulation

The proposed development is located on Fremont Boulevard, which is an arterial street with full street improvements along the project's frontage. Access to the site is via Fremont Boulevard, Beloveria Court, and Maple Street. Those coming by vehicle enter Beloveria Court (a through street between Fremont and Maple) and enter the rear lot from Beloveria Court near Maple.

Valet parking from the public right of way on Fremont Boulevard, if desired, would be subject to review and approval by the City. A condition is proposed specifying conditions by which valet parking could be permitted.

Planning Commission Meeting and Appeal

Staff recommended approval of the project to Planning Commission on June 9, 2011. Primary concerns raised at the hearing were the lack of fire safety improvements within the proposed venue and uncertainty about the applicant's potential for compliance with conditions to acquire the requisite off-site parking. Minutes of the June 9, 2011 Planning Commission Meeting are attached as Informational Enclosure 2. Planning Commission voted 3-3-0-1-0 on a motion to approve the project, meaning that the project was not approved due to lack of a majority vote. On June 13, 2011, the applicant wrote a letter (attached as Informational Enclosure 1) appealing the item to City Council, citing the Planning Commission's discussion points at the hearing, since no direct denial motion was made. The applicant therefore based the appeal on the primary discussion points, indicating that no fire upgrades had been required by the City during review (and that lack of fire safety upgrades should therefore not be held against the project), and that the parking agreement is required by code and standard practice to be completed after the Conditional Use Permit is approved by the Planning Commission. Additionally, the applicant requested changes to two conditions that would change staff's earlier recommendation to allow (a) a later closing time to enable the holding of special events such as New Year's parties that include alcohol, and (b) reduction of Police Department noticing requirements for smaller banquet hall and dinner theater events.

Staff has reviewed the applicant's appeal letter, and continues to recommend the project be approved as originally recommended to Planning Commission. Regarding the proposal to have a later closing time, staff is concerned about the effect of calls for service related to the later closing time on the ability to police this facility in conjunction with others in the neighborhood, and does not recommend extending the hours. Regarding the Police Department notifications, staff is concerned about the fact that recent calls for service have been driven by private banquet hall-type uses. Providing notification of events to the Police Department, including information about recurring events, keeps the operator mindful of the operational limitations and allows the City to document when the facility departs from its plans in case of a public safety response to an event.

Findings for Approval

In order to approve the proposed Conditional Use Permit Amendment, the project must be found consistent with the General Plan and Zoning Ordinance. Based upon the above analysis, staff finds the proposed Conditional Use Permit Amendment is in conformance with General Plan and Zoning Ordinance and recommends the following findings:

Conditional Use Permit Findings [FMC 8-22509]

- a. The proposed use is consistent with the general plan because the range of venues proposed fits within those allowable within the Community Commercial General Plan Land Use Designation.
- b. The site is suitable and adequate for the proposed use because it was originally constructed for similar assembly uses, relevant standards for the proposed additional uses, such as provision of adequate off-site parking, are met as specified herein, and conditions for operation and security are imposed to control the use of the structure.
- c. The proposed use would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the

street system or other public facilities or services. Continued use of the building with the additional venues that are similar to currently permitted uses will not result in substantial changes in patterns of vehicular or pedestrian traffic on Fremont Boulevard or surrounding streets.

- d. The proposed use would not have a substantial adverse economic effect on nearby uses because the use is synergistic with surrounding uses in the existing historic downtown.
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because adequate conditions are included to prevent the use from becoming a nuisance as it relates to noise, parking, and other potential concerns as described in the report.
- f. The design of the project is compatible with existing and proposed development in the district and its surroundings because no physical changes to the exterior of the building are proposed or approved within the scope of this project.
- g. The project will comply with the provisions of article 27 of this chapter (Site Plan and Architectural Approval) because the applicant is already required by law, and as a condition of this conditional use permit, to acquire permits reviewed by the City prior to any potential future modifications to the building.

Parking Waiver Findings [8-22003.1(d)i-iv.]

- i. Parking has been provided on-site and proposed at an off-site location within 400 feet of the subject property to the maximum extent feasible in the form of a parking agreement for 52 total spaces. There is sufficient on-street parking to accommodate the vehicles used by employees and customers of the business seeking the reduced parking requirement approval because there is available evening on-street parking on Fremont Boulevard, Maple Street, and parts of Peralta Avenue within 400 feet.
- ii. The reduced parking requirement will not be detrimental to property within 300 feet of the business seeking the reduction because sufficient off-site parking exists on surrounding streets and adjacent businesses are not also using similar parking waivers.
- iii. The reduction or elimination of parking required for the use change implements, to the extent applicable or desirable, specific side and front-yard objectives of the design guidelines adopted for the area in that maintenance of the existing site plan contextual with the main street pattern of the core of Centerville is facilitated by the parking waiver.

The findings above are also contained in Exhibit "B" enclosed.

ENVIRONMENTAL REVIEW:

The proposed project is exempt from the California Environmental Quality Act (CEQA) under Guideline 15301 because it is an existing facility designed and used for assembly uses.

ENCLOSURES:

- [Exhibit “A”: Site Plan and Floor Plans](#)
- [Exhibit “B”: Findings and Conditions](#)
- [Informational Enclosure 1: Applicant’s Appeal Letter](#)
- [Informational Enclosure 2: June 9, 2011 Planning Commission Minutes](#)
- [Informational Enclosure 3: Project Information Summary](#)

RECOMMENDATION:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15301 of the CEQA Guidelines because it is an existing facility.
3. Find Conditional Use Permit Amendment PLN2011-00093 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report. The project also conforms to the goals, objectives, and policies of the Centerville Specific Plan.
4. Grant the appeal and approve Conditional Use Permit Amendment PLN2011-00093, as shown on Exhibit “A”, subject to findings and conditions in Exhibit “B”.

6.1 Report Out from Closed Session of Any Final Action

7.1 KATO ROAD GRADE SEPARATION PROJECT AGREEMENTS

Approve and Authorize the City Manager to Execute a Fifth Amendment to the Cooperative Agreement with the Santa Clara Valley Transportation Authority for the Kato Road Grade Separation Project

Contact Person:

Name: Jim Pierson
Title: Director
Dept.: Public Works
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Executive Summary: The City previously entered into an agreement with the Santa Clara Valley Transportation Authority (VTA) to implement the Kato Road Grade Separation Project (KGS) to facilitate the extension of BART to San Jose. The original agreement has been amended four times. This fifth amendment addresses the duration of the closure of Kato Road during construction, the City's construction inspection services fee for the project, and VTA reimbursement of City right-of-way acquisition services expenses.

BACKGROUND: In 2008, the City Council approved a cooperative agreement with VTA for the implementation of the Kato Road Grade Separation Project to facilitate the BART extension to San Jose. The agreement calls for VTA to implement the project and be responsible for all implementation costs, with the exception of a \$10 million State grant that the City would contribute to the project. The cooperative agreement also provides for the City to assist VTA in acquiring the necessary property for the project, with VTA fully reimbursing the City for all costs associated with the property acquisition. The cooperative agreement was subsequently amended three times to update the property acquisition and overall project costs and schedule and make other minor changes, but continued to have VTA be responsible for all implementation costs of the KGS project other than the State grant the City would contribute. The agreement was amended a fourth time to allow the execution of a Construction and Maintenance Agreement among the City, Union Pacific Railroad and VTA, and establish the rights and responsibilities for construction of the Kato Road Grade Separation Project and maintenance of the completed facility.

DISCUSSION/ANALYSIS: The original agreement, based on preliminary design information, anticipated that Kato Road would be closed for a period of up to six months. Now that the design has been completed, VTA expects the closure will last up to nine months. VTA's construction contract documents will specify that the closure cannot exceed nine months. However, VTA anticipates that the closure will occur in part during the winter months. Therefore, VTA is also asking for the flexibility to be able to extend the closure for an additional three months if delays occur due to circumstances beyond VTA's or its contractor's control, such as severe weather or an earthquake. To allow VTA to act quickly, but still allow the City to maintain some control over the closure duration, the extension would require prior written approval by the City Manager. The amendment specifies the nine-month closure period with the possibility of extending the closure to twelve months, given the circumstances cited above. City staff believes this is a reasonable adjustment to the project conditions based on the information provided by VTA. Hopefully, the contractor, once on board, will be able to develop a

schedule that will minimize the closure time in order to reduce their costs. The Amendment also specifies that Kato Road be fully reopened to traffic before Warren Avenue is closed to traffic during construction of the Warren Avenue Grade Separation.

The original agreement required VTA to obtain a City encroachment permit, but did not specify how much VTA should be prepared to reimburse the City for construction inspection services. This amendment specifies the City's inspection services cannot exceed \$200,000 based on a conservative estimate provided by the Public Works Department. The amendment also provides for reimbursement invoicing and payment deadlines.

The original agreement required VTA to pay all City right-of-way acquisition expenses. The provision was amended twice to increase the reimbursement amount. This amendment further increases that amount to \$1,000,000. The \$1,000,000 includes \$800,000 for acquisition services and \$200,000 for trial costs. All costs will be paid by VTA.

In summary, staff recommends that the Council authorize the City Manager or his designee to execute a fifth amendment to the Cooperative Agreement with the VTA for the Kato Road Grade Separation, to include the following: 1) specify a nine-month closure period for Kato Road and further authorize the City Manager to extend the closure up to three additional months if certain extraordinary circumstances occur; 2) specify a \$200,000 not-to-exceed amount for construction inspection services; and 3) specify a \$1,000,000 not-to-exceed amount for right-of-way acquisition services and trial costs.

FISCAL IMPACT: All additional costs are the responsibility of the VTA. There is no fiscal impact on the City.

ENVIRONMENTAL REVIEW: Railroad grade separations are statutorily exempt from CEQA review pursuant to Public Resources Code 21080.13. The City filed a Notice of Exemption for the Kato Road Grade Separation Project with the County Recorder on November 19, 2008.

ENCLOSURE: None

RECOMMENDATION: Approve and authorize the City Manager or his designee to execute the fifth amendment to the Cooperative Agreement with the VTA and delegate the authority to the City Manager to approve the extension of the nine-month closure period for Kato Road to 12 months if certain extraordinary conditions occur.

7.2 DRAFT CLIMATE ACTION PLAN

City Council Review and Consideration of the Draft Climate Action Plan

Contact Person:

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Executive Summary: The City of Fremont is preparing a Climate Action Plan to serve as the City's roadmap for reducing greenhouse gas (GHG) emissions in City operations and the community at large. Staff has refined the list of actions for reducing GHG emissions that the City Council reviewed on June 15, 2010, and has written the core chapters of the Climate Action Plan. Staff seeks Council input regarding the proposed chapters and emission reduction actions, and direction to complete the final Climate Action Plan, which is scheduled for adoption concurrent with the General Plan Update and Draft Environmental Impact Report in late 2011.

BACKGROUND: Like many cities across California and the nation, the City of Fremont is preparing its first Climate Action Plan (CAP). The CAP includes strategies to achieve greenhouse gas emission reductions throughout the community and in City operations.

Development of the Climate Action Plan: The development of the Climate Action Plan grew out of the work of the Green Task Force (GTF), a citizen group appointed by the City Council. On July 22, 2008, the GTF presented twenty recommendations to the City Council that focused on seven categories, including transportation, land use and community design, economic development, waste reduction and recycling, public outreach and education, energy efficiency and conservation, and storing and offsetting carbon emissions. As a follow-up, on September 13, 2008, staff hosted a Climate Action Workshop, attended by over 150 citizens, to receive public input on the GTF's recommendations. On November 18, 2008, the City Council adopted the regional goal of reducing greenhouse gas emissions 25% by 2020 from the 2005 baseline. Council also directed staff to begin preparation of a Climate Action Plan concurrent with the General Plan Update.

Work on the Climate Action Plan began in 2009. Staff met twice in 2009/10 with an ad hoc citizen group which included members of the youth community, the Green Task Force, and others who had previously expressed an interest, to discuss the Climate Action Plan's emission reduction actions. Staff also presented at a joint City Council/School Board meeting.

Internal to the City, a cross-departmental working group met regularly to discuss the CAP, focusing primarily on developing the lists of recommended actions for reducing greenhouse gas emissions which lie at the heart of the Plan. In addition, City staff worked with representatives of other public agencies such as Union Sanitary District and the Alameda County Water District, to identify collaborative opportunities for achieving greenhouse gas emission reductions.

Using input from the community, Council, and the cross-departmental working group, staff prepared a preliminary list of greenhouse gas emissions reductions that was presented to Council in June, 2010 and to the public at the November 6, 2010 community workshop related to the draft General Plan.

DISCUSSION/ANALYSIS:

The overarching goals of the Climate Action Plan are twofold:

First: To identify specific and achievable actions for reducing greenhouse gas emissions in Fremont.

Second: To serve as a resource for the community and City organization as we work together on this critical initiative.

Achieving GHG emission reductions: The City's baseline greenhouse gas emissions inventory revealed that the transportation sector—primarily passenger vehicles—is responsible for 60% of Fremont's GHG emissions. Building energy use and solid waste are responsible for 37% and 3% of emissions, respectively.

In order to meet the goal of a 25% reduction from 2005 levels by 2020, the community would need to reduce greenhouse gas emissions by over 700,000 MTCO₂e (metric tons of carbon dioxide equivalent, a measurement that allows for the direct comparison of the impacts of different greenhouse gases). Like many local jurisdictions with ambitious reduction goals, the City will rely heavily on implementation by the State of California of a wide range of emission reduction strategies. Two examples of such State-level strategies include 1) the *Renewables Portfolio Standard*, which requires investor-owned utilities such as Pacific Gas and Electric, the energy provider for the City of Fremont, to increase procurement from eligible renewable energy sources (such as solar and wind), and 2) the *Low Carbon Fuel Standard*, which will reduce greenhouse gases by lowering the carbon content of transportation fuel. The City will also rely on the successful implementation of regional initiatives, such as Senate Bill 375, the nation's first law to control greenhouse gas emissions by reducing vehicle miles traveled through conscientiously-planned growth patterns.

Although the City can not achieve its goal without State and regional actions, Fremont can reduce greenhouse gas emissions, both community-wide and in City operations. The Climate Action Plan includes an array of actions to help the City make progress toward the reduction goal.

Content of the Climate Action Plan: Since the Council work session held on June 15, 2010, staff has refined the 'Portfolio of Actions for Reducing Greenhouse Gas Emissions' reviewed by Council at that work session and has written the draft text of the Climate Action Plan's core chapters. These chapters are:

- Introduction and Setting The Context
- Land Use and Mobility: Moving Smarter, Improving Options and Changing Behavior
- Maximizing Energy Efficiency and Reducing Energy Use
- Solid Waste: Reduce, Reuse, Recycle, Compost
- Water: Conservation is the Key
- Municipal Services and Operations
- Adapting to Climate Change

The final Climate Action Plan will also include a list titled “What You Can Do To Reduce Greenhouse Gas Emissions!” for everyday use by residents and businesses. The final plan will also be graphically formatted and enhanced with additional photographs and images to create a visually attractive and user-friendly document.

Five of the chapters – land use and mobility, energy, solid waste, water, and municipal services – include actions for reducing greenhouse gas emissions through the year 2020. When possible, staff has estimated the potential emission reductions from different actions. It is important to note that providing estimates of GHG emission reductions is an inexact science due to the limitations of existing models. However, estimates can provide a sense of the magnitude of the potential that some actions have for achieving greenhouse gas emission reductions.

The chapter “Adapting to Climate Change” does not include implementation actions. It provides a broad discussion of the topic of climate adaptation, i.e. actions that reduce the vulnerability of the built environment to the effects of climate change.

Resources for ongoing implementation: Based on the limited staff resources available to manage implementation of the CAP (currently one-half full-time employee in the Planning Division and one-quarter full-time employee in the Environmental Services Division), staff proposes a three-stage implementation plan through 2020. Staff would begin work on **short-term actions** in the first one to three years following Plan adoption; on **medium-term actions** in years three to five; and on **long-term actions** in years five to ten. Following adoption of the Climate Action Plan, responsibility for the actions would be incorporated into the ongoing work plans of the relevant employees.

Public notification: The draft chapters are posted on the City’s website. Notification of the City Council meeting was provided to individuals on the General Plan Update and the Climate Action Plan email lists.

FISCAL IMPACT: Not applicable, since no action is being taken.

ENVIRONMENTAL REVIEW: The draft Climate Action Plan is incorporated into the analyses in the Draft Environmental Impact Report (DEIR) for the General Plan Update. Certification of the Draft Environmental Impact Report for the General Plan Update will also provide California Environmental Quality Act clearance for the Climate Action Plan. Certification will occur at a later date, when the DEIR, General Plan Update, and Climate Action Plan are submitted to the City Council for adoption.

ENCLOSURES:

- [Draft chapters of the Climate Action Plan.](#)
- [Implementation Table of Actions for Reducing Greenhouse Gas Emissions](#)

RECOMMENDATION:

1. Provide input on the draft Climate Action Plan chapters and actions for reducing greenhouse gas emissions in the community and in City operations.
2. Direct staff to complete preparation of the draft Climate Action Plan for adoption concurrent with the Draft General Plan and Environmental Impact Report.

8.1 Council Referrals

8.1.1 MAYOR WASSERMAN REFERRAL: Designation of League of California Cities Annual Conference Voting Delegate

RECOMMENDATION: Appoint Vice Mayor Natarajan as the City's voting delegate for the League of California Cities Annual Conference and Councilmember Chan as the voting alternate. The League's 2011 Annual Conference is scheduled for September 21-23, 2011 and an important part of the Annual Conference is the Annual Business Meeting, scheduled for September 23. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

Consistent with the League bylaws, a City's voting delegate must be designated by the City Council. Up to two alternate delegates may be designated as well. The League's bylaws now require that designating the voting delegate and alternates must be done by City Council action and cannot be accomplished by individual action of the mayor or city manager alone.

To remain consistent with League bylaws, I am recommending appointing Councilmember Natarajan as the City's voting delegate and Councilmember Chan as the voting alternate

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS	California Public Employees' Retirement System	MTC	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD	Community Development Department	NLC	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG	Compressed Natural Gas	PWC	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC	California State Association of Counties	RFQ	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP	Regional Occupational Program
DEIR	Draft Environmental Impact Report	RRIDRO	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR	Environmental Impact Report (CEQA)	TCRDF	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA	Federal Emergency Management Agency	USD	Union Sanitary District
FFD	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC	Fremont Municipal Code	WMA	Waste Management Authority
FPD	Fremont Police Department	ZTA	Zoning Text Amendment
FRC	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
July 26, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
		August Recess		
September 6, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 13, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 20, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 27, 2011		No Council Meeting		
October 3, 2011	4-6 p.m.	Joint Council/FUSD Meeting	Council Chambers	Live
October 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 18, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 25, 2011		No Council Meeting		
November 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 15, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 22, 2011		No Council Meeting		
November 29, 2011		No Council Meeting		